# Part 152
# Airport Aid Program

This edition replaces the existing loose-leaf Part 152 and its changes.

This FAA publication of the basic Part 152, effective July 1, 1972, incorporates Amendments 152–1 through 152–13 with preambles.

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or added material for that particular subpart. The amendment number and effective date of new material appear in bold brackets at the end of each affected section.

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**Subpart C—Funding of Approved Projects**



**Subpart D—Accounting and Reporting Requirements**

**Subpart F—Suspension and Termination of Grants**



**Subpart G—Energy Conservation in Airport Aid Program**



**Appendix A**



**Appendix B**



**Appendix C**



**Appendix D**

in the *Federal Register* on December 29, 1970 (35 FR 19678). Due consideration has been given to all comments presented in response to that Notice. The public comments received were generally favorable, although some commentators voiced objections or recommended modifications to certain proposed provisions.

As stated in Notice 70–50, the Airport and Airway Development Act of 1970 authorizes the Secretary of Transportation to exercise the regulatory functions set forth in part II of the Act (sections 11 through 27). The Secretary has delegated that authority to the Administrator of the Federal Aviation Administration (35 FR 17044), except with respect to certain provisions for approval, hearings, air and water quality, and airport site selection with respect to any project as to which opposition is stated, whether expressly or by proposed revision, by any Federal, State, or local government agency or by a substantial number of persons, other than one of those agencies.

Also as stated in Notice 70–50, part 151 of the Federal Aviation Regulations prescribes the policies and procedures for administering the Federal-aid Airport Program under the Federal Airport Act (49 U.S.C. 1101 *et seq.*). Until that program is completely phased out, part 151 will continue to govern grants made under that Act. Section 52(c) of the 1970 Act continues in effect all orders, determinations, rules, regulations, permits, contracts, certificates, licenses, grants, rights, and privileges issued, made, granted or allowed to become effective under the Federal Airport Act until appropriately terminated.

The rules now issued to implement the Airport Aid Program are in large part the same as the substantive provisions of part 151. However, as proposed in Notice 70–50, a number of changes have been made that are required by the 1970 Act. Thus, appropriate new terminology is used; reference is made to the preparation of a "National Airport System Plan", with subsequent review and revision as necessary, instead of the former yearly "National Airport Plan"; and public hearings must now be made available by sponsors, in specified development situations, to consider the economic, social, and environmental effects. Other changes include expansion of "airport development" to include work with respect to navigation aids, to safety equipment required by regulation for airport certification under new section 612 of the Federal Aviation Act of 1958, and to acquisition of land for future airport development. Also, the United States is not an eligible sponsor, under the 1970 Act.

As another provision that is not in the Federal Airport Act, section 16(c)(4) of the 1970 Act prohibits the approval of any airport development project involving airport location, a major runway extension, or runway location that is found to have an adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment unless, after consultation with the Secretary of the Interior and the Secretary of Health, Education, and Welfare, it is found that no feasible and prudent alternative exists and that all possible steps have been taken to minimize such adverse effect. Furthermore, section 16(d) of the 1970 Act provides that no airport development project involving the location of an airport, an airport runway, or a runway extension may be approved unless the public agency sponsoring the project certifies that there has been afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport location and its consistency with the goals and objectives of such urban planning as has been carried out by the community.

Order 5610.1A, 36 FR 23679, of the Office of the Secretary of Transportation has implemented section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the above portions of section 16 of the 1970 Act, and section 4(f) of the Department of Transportation Act (airport programs or projects affecting public parks, recreation areas, wildlife refuge, or historic sites). Pursuant to that order, these regulations require the applicant for developmental aid to submit a proposed draft environmental impact statement, to be utilized in the preparation of an environmental impact statement or negative declaration by the Administrator.

Also as a provision that is not in the Federal Airport Act, section 16(e) of the 1970 Act prohibits the approval of any project involving airport location, a major runway extension, or runway location unless the Governor of the State in which the project may be located certifies in writing that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to

Section 10(d) of the Federal Airport Act provides that to the extent that the project costs of an approved project represent the cost of (1) land required for the installation of approach light systems, (2) in-runway lighting, (3) high intensity runway lighting, or (4) runway distance markers, the U.S. share may not exceed 75 percent of the allowable costs thereof. The parallel provision in section 17(d) of the Airport and Airway Development Act of 1970 differs from this in three respects. First, the second item is designated as "touchdown zone and centerline runway lighting." Second, the fourth item (runway distance markers) no longer appears. Third, the maximum U.S. share now is 82 percent of these allowable costs, instead of 75 percent. The rules now issued reflect these changes, both in implementing the policy that the project must provide for such of the three named landing aids as are determined to be needed for safe and efficient use of the airport by aircraft, and in the provision on the U.S. share of project costs. Likewise, runway distance markers are excluded from the list of eligible project items.

The 1970 Act does not provide for "advance planning and engineering grants" formerly included in the Federal Airport Act. However, the 1970 Act does provide for two kinds of planning for development purposes, namely airport master planning and airport system planning. As stated in Notice 70–50, the former concerns development for planning purposes of guidance and information as to the extent, type, and nature of development needed at a specific airport, while the latter concerns similar planning as to the extent, type, nature, location, and timing of airport development needed in a specific area. Grants of funds to planning agencies are authorized as to airport system planning, while grants to public agencies are authorized as to airport master planning. The rules now issued reflect these matters and the differences between them. They also incorporate the statutory provisions that a grant under this program is limited to two-thirds of the costs incurred, that not more than 7.5 percent of the available funds in any fiscal year may be allocated for projects in a single State, and that grant allocations between States are to be made in proportion to area encompassed where the project involves land in more than one State.

The rules now issued cover the relevant regulatory items including sponsor and project eligibility, application procedures for each kind of planning grant, grant agreements, allowable costs, payments, and accounting and audit.

As stated in Notice 70–50, § 151.72 provides for incorporation by reference of technical guidelines in certain Advisory Circulars as mandatory standards. These rules, in § 152.83, likewise incorporate Advisory Circulars as mandatory standards, updated and properly referenced.

Also as stated in Notice 70–50, the FAA issued Notice 70–13 on March 11, 1970 (35 FR 4864) that proposed requiring the sponsor of any project under the Federal-aid Airport Program to provide for installing an approved airport beacon if one is not already installed on the airport. The rules now issued include a final rule based on that Notice, in § 152.101. Six comments were received in response to Notice 70–13, most of which agreed with the concept of requiring approved airport beacons, while discussing in particular the type of beacon called for in the FAA standards. Types of beacons that are covered by Advisory Circulars are now made mandatory by the rules being issued. The beacons requirement is made a part of § 152.101, for the reason stated in Notice 70–13, namely, that airport beacons provide a valuable contribution to safety as the initial VFR identification aid for all airports, even in the presence of electronic aids to navigation for IFR-equipped aircraft.

The rules now issued also reflect requirements imposed by Office of Management and Budget Circular No. A–95, as revised February 9, 1971, with respect to complete coordination of projects with State and local governments (§§ 152.23 and 152.123). These rules also reflect the requirements of the Secretary of Transportation (35 FR 9178) with respect to airport development projects involving displacement of persons and acquisition of real property (§ 152.23), implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

The significant public comments received on Notice 70–50 that contained objections or recommended modifications to proposed provisions are considered as follows, grouped under the general categories used in the Notice to indicate changes made from the rules contained in part 151.

before the FAA will act upon a request for aid submitted by the sponsor. This stage is chosen because of the requirements of Office of Management and Budget Circular A–95 and the National Environmental Policy Act of 1969 that must be met before the FAA may consider the sponsor's request for aid. This allows the use of the same time interval to meet ancillary requirements concurrently rather than sequentially, and shortens the time between allocation and grant.

The proposal that a person's interest in the project's social, economic, and environmental impact must be "significant" has been dropped, as the 1970 Act does not specifically impose this qualification. However, it is anticipated that any attempts to delay made by persons making requests out of sheer caprice or general, undefined opposition to the project, may be dealt with appropriately. For the purpose of the hearing requirement, section 16(d) of the 1970 Act does not require that the runway extension must be "major", therefore a definition of this kind would not be relevant.

One comment made on behalf of a State noted that under its law the State may lease land for an airport from either a public or a private body, and requested that Federal participation be made available for airport development on land leased by that State from private interests. However, the 1970 Act defines a public airport (for which, alone, Federal assistance is available) as one whose landing area is publicly owned. Accordingly, any leased land must be leased from a public agency owning the land.

One commentator would have the cost of land for the middle marker for Federal participation at the 82 percentage rate. The only land eligible for that rate of participation, under section 17(d) of the 1970 Act, is land required for an approach light system (§ 152.49(d)), and the middle marker is not a part of that system. Another commentator asserted that the rules should be more specific as to participation on exit taxiway lighting system, including taxiway lead-in lighting. The 1970 Act makes only touchdown zone and runway centerline lighting eligible for the 82-percent rate of participation. Exit taxiway systems and taxiway lead-in lighting will be eligible for only the 50-percent rate of participation.

Some comments were concerned with the rules proposed for the airport planning projects newly introduced by the 1970 Act. Two commentators recommended that a pre-existing approved system plan should be a prerequisite to the issuance of a master planning grant for an airport within the particular system. While there is merit in this recommendation, its immediate adoption in the rules could result in undue delay for badly needed master planning. As issued, the rule provides that a master planning grant may not be approved after July 1, 1973, for the purpose of establishing a new airport serving a large or medium air traffic hub in the absence of an appropriate system plan identifying the need for the airport and the acceptable alternate locations where it could be located (§ 152.129). The rule further provides that a master planning grant may not be approved after July 1, 1975, for an existing airport serving a large or medium air traffic hub in the absence of an appropriate system plan identifying the need for the airport. However, the rule also provides that a master planning grant for an individual airport in such an air traffic hub may be approved in the absence of an existing system plan if, in the judgment of the Administrator, the absence of a system plan is due to the failure of the responsible planning agency to proceed with its development, or an existing system plan is not acceptable.

One commentator recommended that the rules should provide for eligibility of planning costs incurred before the execution of the planning grant. However, it is not considered proper or reasonable to provide U.S. payment for planning costs incurred before the execution of the planning grant which represent effort expended upon a work program which has yet to be approved by the Government as being appropriate to the proposed planning effort. However, the FAA agrees that there is both merit and justification for reimbursing an applicant for reasonable and substantiated costs which are incurred in designing the study effort needed to accompany its application. Thus, the recommendation has been partially accommodated (§ 152.137(c)).

Three commentators recommended that the administrative costs incurred by a sponsor should be considered eligible where a third-party contract is involved. Here, the sponsor's administrative costs in a planning project are largely indirect, such as travel, review time, and correspondence, unlike the situation

assistance activities. This coordination is underway and where resolved, will determine whether land-use planning will be funded under the Airport Planning Grant Program or by HUD.

Several other recommendations were made that, if adopted, would provide rules in conflict with the 1970 Act. Thus, it was recommended that 10-percent amendment (provision for change in a grant agreement that does not increase the maximum obligation of the U.S. by more than 10 percent) should be made applicable to planning grants. However, this 10 percent item is applicable, under the Act, only to airport development grants, and there is no similar authority as to planning grants. Another recommendation was that the "designated planning agency" should be designated by the Governor of the State rather than by the Secretary as provided in the Act. This recommendation likewise cannot be accommodated, since this procedure is set forth in the Act.

On April 17, 1971, the Secretary of labor published regulations (29 CFR 1518: 36 FR 7340) on construction health and safety standards pursuant to section 107 of the Contract work Hours and Safety Standards Act (83 Stat. 96.). These regulations became effective on April 24, 1971, for all Federally assisted construction contracts initially advertised after that date, and on April 27, 1971, for negotiated contracts for which negotiations began after that date. On May 29, 1971, the Secretary of Labor published regulations (29 CFR 1910; 36 FR 10466) on occupational safety and health standards pursuant to sections 6(a) and 8(g) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1600; 29 U.S.C. 655, 657). Section 1910.12 of those regulations adopted the standards prescribed by 29 CFR 1518 as occupational safety or health standards under section 6(a) of the William-Steiger Act which are applicable to employment in construction work. To implement those regulations, new provisions have been added to appendix H to this part that require the sponsor to include in each nonexempt construction contract (also a condition in any subcontract) that the contractor and any subcontractor may not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor. Appendix H also reflects the requirements of part 5a of the Secretary of Labor, issued September 27, 1971 (36 FR 19305) that provides labor standards for ratios of apprentices and trainees to journeymen on Federal and Federally assisted construction, as well as amendments to part 5 of the Secretary's regulations, issued September 28, 1971 (36 FR 19304) concerned with apprentices and trainees.

B. *Policy determinations.*

One commentator expressed the opinion that the proposed orientation of a clear zone on the threshold is an area of contention that should require further study. Since issuance of Notice 70–50, the FAA has encountered considerations that persuade concurrence in this comment. Therefore, until additional study has been completed, the clear zone will be considered to be located as heretofore, and this rule effects no change from part 151 in this respect (§ 152.9(b)).

As proposed in Notice 70–50, the phrase "runway safety area" is now used (§ 152.11), instead of "landing strip" as formerly used. One commentator expressed concern that making the "runway safety area" capable of supporting aircraft would be an excessive and expensive requirement. However, the intention of the proposal was merely to provide more accurate terminology, not to impose a design standard for the runway safety area different from that applicable to the landing strip.

At this point, it may be noted the provisions on high intensity runway edge lighting, as stated in § 152.13(b)(3), differ slightly from what was proposed in Notice 70–50, by referring to items recommended in the National Airport System Plan rather than to items "programmed." The change is necessary because the installation of landing aids at a particular location is not identified in the Facilities and Equipment program over a 5 year period, and this makes it impossible to apply the criteria precisely as set forth in Notice 70–50 for a particular airport location.

Two commentators considered service within 5 years by aircraft of more than 150,000 pounds as an eligibility requirement for HIRL on an ILS runway to be excessive. The FAA now considers that

Three commentators asserted that a mandatory requirement for VASI-2 with MALS on "dusty" airports (those serving small aircraft, other than turbojet powered aircraft) is too expensive and beyond the airport owner's technical expertise to maintain. However, this requirement is retained (§ 152.103(h)), since according to 3-year survey of general aviation accidents, one-half of these accidents occurred during the approach and landing phase of flights. The VASI–2 is an effective visual aid in assisting the pilot to establish a safe approach slope.

C. *Clarification and other purposes.*

One commentator asserted that the cost of piers for an approach light system (ALS) should be considered eligible for Federal participation at the 82-percent rate. As proposed in Notice 70–50, this cost would be ineligible for this rate. Section 17(d) of the 1970 Act provides for 82-percent participation in the cost of acquiring land for the installation of approach light systems. In the past, the FAA has considered the construction of piers, in lieu of land acquisition, for the installation of ALS over water as eligible airport development only at the 50-percent rate of participation. After reconsideration, it has been determined to continue that policy with respect to piers (§ 152.49(d)(3)). Other construction associated with the installation of an ALS is limited as set forth in the Notice.

Three commentators expressed concern over a proposed requirement that contracts for engineering and planning services must be submitted for FAA approval before execution of a new (or extension of an existing) contract, or performance of force account services in any project for airport development or planning. They pointed out that engineering contracts are frequently entered into long before there is any Federal involvement, and to require FAA approval at such an early stage complicates and delays project formulation. The FAA considers this point well taken, especially since the 1970 Act makes eligible project formulation costs, including engineering services, incurred before the execution of a grant agreement, recognizing that engineering services are required early in the formulation stage. Accordingly, the rules require FAA approval of the engineering contract before the start of the development of design plans and specifications (§ 152.51(f)).

In consideration of the foregoing, Title 14, Chapter 1, of the Code of Federal Regulations is amended, effective July 1, 1972, by adding the following new part 152 in subchapter I.

(Sections 11 through 27 of the Airport and Airway Development Act of 1970; 84 Stat. 220–233. Section 1.47(g) of the Regulations of the Office of the Secretary of Transportation; 35 FR 17044.)

NOTE: Incorporation by reference provisions approved by the Director of the *Federal Register* on April 14, 1972.

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## Amendment 152–1

## Rules of the Secretary of Labor; Clarifying Amendments

**Adopted: November 15, 1972** **Effective: November 25, 1972**

**(Published in 37 FR 25022, November 25, 1972)**

The purpose of these amendments to part 152 of the Federal Aviation Regulations is to: (1) substitute, in two places in § 152.53, reference to Standard Form 308 instead of old Forms DB–11 and DB–11(a) of the Department of Labor; (2) clarify several items in paragraph D of appendix H by changing the language "Each Federal agency concerned" and "Federal agencies" (adopted from the regulations of the Secretary of Labor) to "the FAA;" (3) correct several cross-references in paragraph D and one in § 152.45(a)(1); and (4) add a new sentence in § 152.53(c)(2) to state that general (area) wage determinations now are published in the *Federal Register* instead of being disseminated to each agency concerned, as formerly.

**Amendment 152-2**

## Revised Requirements for Administration of Airport Aid Program

**Adopted: May 24, 1974** **Effective: July 1, 1974**

**(Published in 39 FR 19347, May 31, 1974)**

The purpose of this amendment to part 152 of the Federal Aviation Regulations is to implement certain revised requirements for administering grants-in-aid to State and local governments under the Airport and Airway Development Act of 1970.

This amendment is based on a Notice of Proposed Rule Making (Notice No. 74–7) issued on February 14, 1974 and published in the *Federal Register* on February 21, 1974 (39 FR 6674). Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all comments received in response to that Notice.

The basis for these revised administrative requirements is Office of Management and Budget (OMB) Circular A–102 dated October 19, 1971 (with supplementing Transmittal Memorandums dated January 25, 1972 and September 8, 1972), and OMB Circular A–87 dated May 9, 1968 (amended by Transmittal Memorandum No. 1 dated June 17, 1970).

OMB Circular A–102 promulgated Attachments A through O containing standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State and local governments. Also included in the Circular are standards to insure the consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101).

By memorandum of March 27, 1969, to the Office of Management and Budget, and to ten Federal agencies engaged in domestic grant-in-aid programs, the President ordered a three-year effort to simplify, standardize, decentralize and otherwise modernize the Federal grant machinery. The standards subsequently developed and included in the attachments to OMB Circular A–102 will replace a multitude of varying and sometimes conflicting requirements in the same or similar subject matters which have been burdensome to State and local governments. Inherent in this standardization process is the concept of placing greater reliance on State and local governments. In addition, The Intergovernmental Cooperation Act of 1968 was passed, in part, for the purposes of: (1) achieving the fullest cooperation and coordination of activities among levels of government; (2) improving the administration of grants-in-aid to the States; and (3) establishing coordinated intergovernmental policy and administration of Federal assistance programs. This Act provided certain basic policies pertaining to administrative requirements to be imposed upon the States as a condition to receiving Federal grants. The implementing instructions of these policies were initially issued in OMB Circular A–96 dated August 29, 1969. OMB Circular A–102 modifies these instructions in the interest of achieving further consistency in implementing that Act.

OMB Circular A–102 includes 15 attachments, Attachments A through O, each of which prescribes standards for a separate area of grant administration, as follows:

Attachment A—Cash Depositories

Attachment B—Bonding and Insurance

Attachment C—Retention and Custodial Requirements for Records

Attachment D—Waiver of "Single" State Agency Requirements

Attachment E—Program Income

Attachment F—Matching Share

Attachment G—Standards for Grantee Financial Management Systems

Attachment N—Property Management Standards

Attachment O—Procurement Standards

OMB Circular A–87 promulgates principles and standards for determining costs applicable to grants and contracts with State and local governments. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and their Federal counterparts.

To the extent that OMB Circulars A–102 and A–87 are directive upon the FAA, those requirements have been, or will be, implemented by internal directive or policy guidance. Standards and requirements applicable to sponsors or grantees are to be implemented by amendments to appropriate sections of part 152 of the Federal Aviation Regulations, and by including certain of the material as appendices to part 152. For convenience and clarity, OMB Circular A–87 and Attachments G, N, and O of OMB Circular A–102, have been edited and appear as appendix J, K, L, and M, respectively, of part 152. In general, only those portions which are directive upon Federal agencies have been deleted as superfluous for the purposes of part 152.

This amendment implements a number of significant changes in grant administration. A brief discussion of major changes is set forth below:

Appendix J, which is derived from OMB Circular A–87, prescribes principles and standards for determining costs applicable to grants and contracts with State and local governments, and will allow under the Planning Grant Program certain indirect costs, principally certain administrative costs, and require sponsors to support such costs by means of a cost allocation plan or indirect cost proposal.

Appendix K, which is derived from Attachment G to OMB Circular A–102, prescribes standards for financial management systems required to be established and maintained by sponsors.

Appendix L, which is derived from Attachment N to OMB Circular A–102, prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments.

Appendix M, which is derived from Attachment O of OMB Circular A–102, provides standards for use by State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds.

New application and payment forms are implemented by this amendment. The grant agreement form currently in use would continue to be used.

Revised grant payment procedures are provided for. Generally, reimbursement up to the full amount of the grant without audit may be made where allowability of costs can be determined prior to audit, and partial grant payments could be made as advance payments, under certain conditions, up to 90 percent of the estimated United States' share of project costs or the grant amount.

Provisions for withholding of grant payments under certain conditions, and for suspension and termination of grants for cause or convenience, and for requesting reconsideration of suspension or termination actions by the Administrator are included.

Information and data previously required to be submitted in the summary of project costs and in periodic cost estimates will now be submitted in periodic financial reports (requests for payment) and in program performance reports.

Under the planning grant program, advance payments may be made by letters of credit or by Treasury check, under certain conditions, up to the full amount of the grant agreement.

Real property donated to the sponsor by another public agency, and previously not an allowable project cost, will now be an allowable project cost, subject to the limitations of § 152.45(d) of part 152.

of OMB Circular A–102 and A–87 will be permitted only in exceptional cases and where adequate justification can be presented to the Administrator of the General Services Administration. However, as indicated in Notice 74–7, recommendations for change or amendment will be, and have been, carefully considered, and to the extent that such changes or amendments are permitted by existing law and appear to offer benefits in program administration, recommendations will be made to the Office of the Secretary of Transportation.

A substantial portion of comments received in response to Notice No. 74–7 recommended changes or amendments which would be at variance with the standards and procedures contained in OMB Circulars A–87 and A–102, and are not feasible within the constraint of government-wide grant-in-aid program uniformity. Consideration of these recommendations will be continued in the light of program experience, and with a view to future rulemaking and implementation, where program deficiencies become apparent.

In this connection, and in response to related comments, the FAA is initiating a review of current advance payment procedures in the interest of expediting such payments to sponsors. The feasibility of utilizing letters of credit, in the case of sponsors who qualify under the provisions of Attachment J of OMB Circular A–102, is included in that review.

In response to comments received, and in the interest of clarity and conformance with OMB Circulars A–87 and A–102, a number of minor changes from the amendments proposed have been made, as follows:

Section 152.47(a)(8) has been reworded to make it clear that only "direct" costs are allowable project costs; the word "specifically," proposed to be deleted, is retained.

Section 152.51(a), relating to contracting requirements has been amplified for clarity and to conform with OMB Circular A–102 to include a statement of requirements relating to construction bids.

Section 152.63(c) and (d), and 152.143(b) have been changed to provide for a more definite date for the commencement of the record retention period.

Sections 152.63(e) and 152.143(c) have been changed to delete the proposed requirement for transfer of custody of certain records with long term retention value, since that requirement appears to be excessive to the requirements of A–102 and local law in some instances may prohibit such transfer of custody.

Sections 152.69(c) and 152.141(c) have been changed to conform with A–102 to make it clear that cash advances will be made as close as administratively possible to actual disbursements by the sponsor.

Section 152.69(d), relating to the withholding of payments, has been changed by deleting the term "program objectives," as vague and redundant.

Section 152.136, relating to contracting requirements for planning grants and preaward review, has been changed to conform with the requirements applicable to development grants specified in § 152.53.

Paragraph E.2.c. of appendix J has been reworded to make it clear that only those costs incurred specifically for the purpose of the grant are allowable.

Paragraph 3.(c)(6) of appendix M has been changed to make it clear that procurements may be negotiated in any of the stated circumstances, and that not all conditions must be met. A number of editorial corrections have been made in appendix M.

This amendment is made under the authority of sections 11 through 27 of the Airport and Airway Development Act of 1970 (84 Stat. 220–233), and § 1.47(g) of the Regulations of the Office of the Secretary of Transportation (49 CFR § 1.47(g)).

**(Published in 41 FR 37102, September 2, 1976)**

The purpose of this amendment to part 152 of the Federal Aviation Regulations is to eliminate the requirement in § 152.103(h)(2) that two-box VASI (VASI–2) be installed with new construction of medium intensity runway lights (MIRL) on runways at airports serving small aircraft (other than turbojet powered aircraft).

Interested persons have been afforded an opportunity to participate in the making of this amendment by a Notice of Proposed Rule Making (Notice No. 76–11) issued on April 2, 1976, and published in the *Federal Register* on April 12, 1976 (41 FR 15350). Due consideration has been given to all comments received in response to that Notice.

Notice No. 76–11 stated that the mandatory requirement for installation of VASI–2 with the installation of MIRL had, because of the additional installation costs, impeded the installation of MIRL at airports eligible under the Airport and Airway Development Program, and pointed out that the installation of VASI offered no operational advantage, in terms of lower landing minimums under criteria (U.S. Standard for Terminal Instrument Approach Procedures) applicable to instrument approach procedures developed and issued under part 97 of the FAR's (Standard Instrument Approach Procedures).

Comments received in response to the Notice were generally favorable and recognized that elimination of the mandatory requirement for VASI would encourage and facilitate installation of MIRL at eligible airports where the additional cost of VASI might be impeding or prohibitive. Two comments cited the VASI as a very desirable approach aid for both VFR night approaches and day or night instrument approaches, and recommended that VASI be installed on a broader scale at air carrier and general aviation airports.

The FAA agrees that VASI is a valuable approach aid and wishes to emphasize that under this amendment VASI continues to be an *eligible* item for airport development. In addition, the FAA has recently contracted for the installation of over 300 VASIs at airports across the nation. This program supplements the VASI systems now installed at approximately 1100 airports.

Since this amendment relates to public grants and relieves a restriction, it may be made effective on less than 30 days notice.

This amendment is made under the authority of sections 11 through 27 of the Airport and Airway Development Act of 1970 (84 Stat. 220–233), and section 1.47(g)(1) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(g)(1)).

In consideration of the foregoing, § 152.103(h)(2) of the Federal Aviation Regulations is amended effective August 26, 1976.

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## Amendment 152–4

## Processing Airport Development Actions Affecting the Environment

**Adopted: October 12, 1976** **Effective: October 21, 1976**

**(Published in 41 FR 46434, October 21, 1976)**

The purpose of this amendment to part 152 of the Federal Aviation Regulations is to revise references to applicable procedures for processing airport development actions affecting the environment, and to incorporate Department of Transportation Order 5610.1B and Federal Aviation Administration Order 5050.2B by reference.

Interested persons have been afforded an opportunity to participate in the making of this amendment by a Notice of Proposed Rule Making (Notice No. 75–32) published in the *Federal Register* on August

FAA Order 5050.2A was published in its entirety as part of the Notice. Based upon the comments received, both substantive and editorial changes have been made. Since a substantial number of pages were revised and reprinted, the order has been redesigned as FAA Order 5050.2B and is incorporated by reference along with DOT Order 5610.1B in § 152.23(a)(6) of part 152.

The revised procedures are based on requirements of section 102 of the National Environmental Policy Act of 1969 (P.L. 91–190); the Airport and Airway Development Act of 1970 (as amended) (P.L. 91–258); section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), DOT Order 5610.1B, "Procedures for Considering Environmental Impacts," (39 FR 35234, September 30, 1974); and, Council on Environmental Quality (CEQ) Guidelines (40 CFR 1500; 38 FR 20550; August 1, 1973). To the extent that the above referenced statutes and orders are directive, the implementing procedures in FAA Order 5050.2B, are not readily amenable to change. However, all comments recommending changes or amendments were carefully considered and where such changes or amendments were permitted by existing law and appeared to be beneficial, changes have been made in Order 5050.2B.

Notice 75–32 identified the principal revisions in Order 5050.2A which were made to clarify environmental requirements and to provide guidance relating to environmental processes not covered in Order 5050.2. With respect to those items, and in response to comments received, a number of changes have been made in Order 5050.2B, as follows:

For clarity, the order refers to "changing a draft environmental impact statement to a negative declaration" instead of "terminating" that action, and the circumstances in which this action is appropriate have been more precisely stated.

The order previously listed a number of development actions which were excluded from the requirement for assessment. The order now identifies those development actions and environmental circumstances which *require* assessment and excludes all others.

Guidance on approval of airport layout plans (ALP) has been clarified by limiting the applicability of items of development approved by the FAA for the first time. This effectively eliminates retroactive application of the requirement. Additionally, the types of items subject to environmental approval in the ALP have been substantially reduced, and the procedures for conditional approval of the ALP have been simplified, including the elimination of the requirement for sponsor acceptance.

Guidance on land-use assurances has been clarified to recognize limitations on sponsor capabilities in this regard.

Guidance on content of impact statements and processing of statements has been further clarified, particularly in the areas of Noise and Land Use, section 4(f) determinations (DOT Act), Historical and Archaeological sites, Coastal Zone Management Programs, Endangered and Threatened Species, and Light Emissions.

In addition to the revisions identified in the Notice and discussed above, extensive editing, consolidation, and reorganization has been accomplished for clarity, and a number of significant changes or additions have been made, as follows:

"Major new construction or expansion of passenger handling and parking facilities" has been defined and identified as a development item requiring environmental assessment. This addition was necessary to reflect 1976 amendments to the Airport and Airway Development Act.

More specific guidance relating to releases for land covenants has been added.

Requirements relating to findings for master planning grants have been deleted as redundant in view of the provisions in the order regarding airport layout plans and specific development projects resulting from master planning studies.

of part 152. Copies of those documents may be obtained from any FAA Regional Office headquarters or any Airport District Office. Copies are also available for inspection in the Rules Docket, Office of the Chief Counsel, FAA, Washington, DC

Since this amendment relates to public grants it may be made effective on less than 30 days notice.

This amendment is made under the authority of sections 11 through 27 of the Airport and Airway Development Act of 1970 (as amended) (P.L. 258; 84 Stat. 220–233), and section 1.47(g) of the Regulations of the Office of the Secretary of Transportation (49 CFR § 1.47(g)).

In consideration of the foregoing, part 152 of the Federal Aviation Regulations is amended, effective October 21, 1976.

NOTE: Incorporation by reference provisions approved by the Director of the *Federal Register* on September 27, 1976.

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## Amendment 152–5

## Policies and Procedures for Considering Environmental Impacts

**Adopted: June 16, 1977** **Effective: June 27, 1977**

**(Published in 42 FR 32630, June 27, 1977)**

**SUMMARY:** This amendment includes, within FAA regulations dealing with airport development and the acquisition of land, references to FAA and DOT environmental orders that contain policies and procedures for considering environmental impacts. The amendment also deletes certain obsolete terminology.

**FOR FURTHER INFORMATION CONTACT:** Lynne Sparks, Airports Planning Division (AAP–400), Office of Airports Programs, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3263.

**SUPPLEMENTARY INFORMATION:** Subpart B of part 152 of the Federal Aviation Regulations (Airport Aid Program) contains rules and procedures for airport development projects funded under that part. Under § 152.23(a)(6), an eligible sponsor desiring to obtain Federal aid for eligible airport development must submit to the appropriate FAA office for its environmental impact assessment report. That section provides that the report must be prepared in accordance with Department of Transportation (DOT) Order 5610.1B, "Procedures for Considering Environmental Impacts", and FAA Order 5050.2B, "Instructions for Processing Airport Development Actions Affecting the Environment."

Part 154 sets forth rules applicable to the acquisition of U.S. land for public airports under the Airport and Airway Development Act of 1970, as amended. Under § 154.7(b)(14), a public agency applying for a conveyance must send with its request the sponsor's proposed draft environmental impact statement. However, the reference to "proposed draft environmental impact statement" is incorrect since the terminology now used is "environmental impact assessment report". Accordingly, this amendment deletes the obsolete terminology now used.

In addition, § 154.7(b)(14) currently provides that the impact statement (assessment report) must be prepared in conformance with DOT Order 5610.1A and FAA Order 5050.2, both of which are obsolete. The applicable DOT Order is 5610.1B. Therefore, this amendment deletes the reference to DOT Order 5610.1A and inserts in place thereof a reference to DOT Order 5610.1B.

The FAA has recently issued new environmental Order 1050.1B and has canceled Order 5050.2B. However, all of the provisions of Order 5050.2B have been included in appendix 6 of the new order.

Accordingly, parts 152 and 154 of the Federal Aviation Regulations (14 CFR parts 152 and 154) are amended, effective June 27, 1977.

(Secs. 16 and 23, Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1716 and 1723); Sec. 552(a), Administrative Procedure Act (5 U.S.C. 552(a)); Sec. 1.47(f)(1), Regulations of the Office of the Secretary of Transportation, (49 CFR 1.47(f)(1).)

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107.

NOTE: Incorporation by reference provisions approved by the Director of the *Federal Register* on September 27, 1976, and on June 20, 1977. Referenced materials are on file at the Federal Register's library.

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## Amendment 152–6

## Advisory Circulars

**Adopted: August 12, 1977** **Effective: August 25, 1977**

**(Published in 42 FR 42849, August 25, 1977)**

**SUMMARY:** This amendment is being issued to update the list of advisory circulars which contain certain programming, design, and construction standards for airport development projects submitted for approval under the Airport Aid Program. In addition, the amendment explains where those circulars may be examined and how they may be obtained.

**FOR FURTHER INFORMATION CONTACT:** James Burnett, Development Program Division (AAP–600), Program Requirements Branch, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3857.

**SUPPLEMENTARY INFORMATION:** Section 16 of the Airport and Airway Development Act of 1970 (AADA; 49 U.S.C. 1716) sets forth requirements pertaining to the submission and approval of projects for airport development under the AADA. Under paragraph (a) of that section, all proposed airport development must be in accordance with standards established by the Secretary of Transportation, including standards for site location, airport layout, grading, drainage, seeding, paving, lighting, and safety of approaches.

Under § 1.47(f)(1) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)), the Federal Aviation Administrator is delegated authority to carry out the functions vested in the Secretary by the AADA, except sections 3 and 4 thereof. According, the Administrator of the FAA is responsible for establishing the standards described in section 16(a) of that act.

Some of the guidelines for airport development projects are set forth in advisory circulars. These circulars are listed in appendix I to part 152 of the Federal Aviation Regulations. Under § 152.83, the technical guidelines in the advisory circulars are incorporated by reference into subpart C of part 152 (Project Programming Standards for Airport Development Projects) and are made mandatory standards.

The advisory circulars listed in appendix I are revised periodically to reflect new and revised standards. Such standards recently have been established. Therefore, this amendment is necessary to include in appendix I the advisory circulars containing the new and revised standards, and to delete references to circulars which no longer are current.

the Assistant Administrator, Office of Airports Programs. Accordingly, § 152.85(b) has been revised to reflect this change.

The principal authors of this document are James Burnett, Office of Airports Programs, and Danvers E. Long, Office of the Chief Counsel.

Since this amendment is editorial in nature and relates to grants made under the Airport Aid Program, I find that notice and public procedure thereon are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Accordingly, part 152 of the Federal Aviation Regulations (14 CFR 152) is amended, effective August 25, 1977.

(Sec. 16(a), Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1716(a)); § 1.47(f)(1), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)); Sec. 552(a), Administrative Procedure Act (5 U.S.C. 552(a)).)

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107.

NOTE: The incorporation by reference in the preceding document was approved by the Director of the Federal Register on July 26, 1977. Referenced materials are on file at the Federal Register library.

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## Amendment 152–7

## Labor Contract Provisions

**Adopted: December 16, 1977** **Effective: December 27, 1977**

**(Published in 42 FR 64114, December 22, 1977)**

**SUMMARY:** This amendment incorporates the new labor standards involving apprenticeship and training programs which must be employed in airport aid grant construction contracts. The amendment was made necessary by changes in the Department of Labor regulations.

**FOR FURTHER INFORMATION CONTACT:** James Burnett, Development Programs Division, Program Requirements Branch, (AAP–650), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3857.

**SUPPLEMENTARY INFORMATION:** Section 22 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1722) sets forth requirements pertaining to the minimum rates of wages to be paid for work on projects for airport development. That legislation has been implemented by § 152.55(a) of the Federal Aviation Regulations (14 CFR 152.55(a)). The minimum rates are those established by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

The Secretary of Labor has revised part 5 of the regulations (29 CFR part 5) which govern the use of apprentices and trainees in government contracts in an amendment to Title 29 of the Code of Federal Regulations (40 FR 30480; July 21, 1975). The amendment deleted part 5a (29 CFR part 5a), Labor Standards For Ratios of Apprentices and Trainees To Journeymen On Federal and Federally Assisted Construction, from the regulations, while incorporating many of the provisions of that part in the republished part 5. The amended Department of Labor regulations require that all training programs have prior approval in order for contractors in Federal or Federally assisted construction projects to pay trainees a trainee's wage rate (§ 5.2(c)(2)) and not the wage rate of a journeyman. They also specify that only an allowable ratio of trainees to journeymen be employed, and that those employed receive the proper wage. All

amend paragraph K and subparagraphs A(4) and C(2) of appendix H to conform those paragraphs to the applicable Department of Labor regulations.

Subparagraph H(2) has been deleted because the Regulations of the Secretary of Labor do not require the insertion of this subparagraph in a Federal or Federally funded construction contract.

Paragraph I has been revised to update the references therein, to incorporate the current occupational and health standards regulations of the Department of Labor.

Section 152.55(a) of the Federal Aviation Regulations (14 CFR 152.55(a)) allows the Director, Airports Service, to amend any provision of appendix H as required to conform appendix H to the applicable regulations of the Department of Labor. The FAA has transferred the duties and responsibilities of the Director, Airports Service, to the Assistant Administrator, Office of Airports Programs. This amendment revises § 152.55(a) to reflect that change.

The principal authors of this document are James Burnett, Office of Airports Programs, and Richard J. Burton, Office of the Chief Counsel.

Since this amendment relates to grants made under the Airport Aid Program and since the revised contract provisions are required to be inserted in each construction contract by section 22 of the Airport and Airway Development Act of 1970, as amended, and the regulations of the Secretary of Labor, I find that notice and public procedure thereon are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Accordingly, part 152 of the Federal Aviation Regulations (14 CFR part 152) is amended, effective December 27, 1977.

(Section 22, Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1722), § 1.47(f)(1), Regulations of the Office of the Secretary of Transportation, (49 CFR 1.47(f)(1)).

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107.

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## Amendment 152–8

## Allowable Project Costs Under Airport Development Projects

**Adopted: September 11, 1979** **Effective: September 20, 1979**

**(Published in 44 FR 54467, September 20, 1979)**

**SUMMARY:** This amendment permits the inclusion of indirect costs in computing allowable project costs under the Airport Development Aid Program (ADAP). It is needed to correct an inconsistency in the Federal Aviation Regulations. This amendment is intended to conform the computation of allowable costs under the Airport Aid Program to Federal grant policy and the Airport and Airway Development Act of 1970.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Cole, APP–510, Office of Airports Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3050.

**SUPPLEMENTARY INFORMATION:**

project cost is allowable under that section if it was necessary, reasonable, and included in a planning project, and, in most cases, incurred subsequent to the execution of the grant agreement.

Subpart B of part 152 of the Federal Aviation Regulations (14 CFR part 152) contains the rules and procedures for airport development projects. In particular, sections 152.47(a)(8) and 152.47(c)(6), as well as appendix J to part 152, specifically provide that indirect costs are not allowable costs for airport development projects. On the other hand, indirect costs are allowable under section 152.137 for airport planning projects. Therefore, a situation is created whereby indirect costs may be allowable for airport planning projects and not for airport development projects.

The FAA has reviewed these regulations and has concluded that, in accordance with Federal grant policy as expressed in FMC 74–4, indirect costs may be appropriately considered in calculating allowable project costs of airport development projects. Therefore, the affected regulations are being amended to conform to this policy. The amendment is prospective in nature and does not apply to grant agreements executed prior to its effective date.

**Need for Immediate Adoption**

Since this amendment relieves a restriction, does not impose an additional burden on any person, and is necessary to eliminate inconsistencies in the computation of allowable costs under the Airport Aid Programs, I find that notice and public procedure would be contrary to the public interest. However, the FAA intends to review the effects of this amendment. Consequently, interested persons are invited to submit such written data, views, or arguments as they may deem appropriate regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–24, 800 Independence Avenue, SW., Washington, DC 20591. All communications received on or before November 20, 1979, will be considered by the Administrator and this amendment may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

**Adoption of the Amendment**

Accordingly, part 152 of the Federal Aviation Regulations (14 CFR part 152) is amended effective September 20, 1979.

[Sec. 20 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1720), and Sec. 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation (49 CFR § 1.47(f)(1))].

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of a Regulatory Analysis under Executive Order 12044. In addition, the FAA has determined that the expected impact of this regulation is so minimal that it does not require an evaluation.

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## Amendment 152–9

## Civil Rights

**Adopted: February 7, 1980** **Effective: March 17, 1980**

**(Published in 45 FR 10184, February 14, 1980)**

**SUMMARY:** These amendments are being issued to ensure compliance with the statutory requirements of section 30, Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*), that no person is excluded on the grounds of race, creed, color, national origin, or sex from participating in any activity for airport development, airport master planning, or airport system planning conducted

has been given to all comments received in response to the notice. Except as otherwise discussed, they are reflected in this amendment. The FAA recognizes, however, that events which have transpired since the comment period closed in 1977, may require adjustments to the rule after implementation. The FAA therefore will continue to accept comments for one year, following the date the rule becomes effective. If appropriate, it will be amended after consultation with the Equal Employment Opportunity Commission, as required by Executive Order 12067.

The final rule also responds to two major developments at the national level: (1) The President's Civil Rights Reorganization as contained in Reorganization Plan Number 1 of 1978 (43 FR 19807; May 9, 1978) and (2) Issuance of Executive Order 12044, Improving Government Regulations (43 FR 12661; March 24, 1978).

The majority of the 35 commenters expressed two chief concerns:

1. They perceived the requirements of the NPRM as duplicative of, or in conflict with, those of other agencies having responsibility for equal employment opportunity enforcement.

2. They felt the requirements would result in undue administrative burdens.

During the same time frame, the research efforts of a number of Presidential Task Forces uncovered similar problems in the administration of civil rights programs as a whole. Their conclusions resulted in the incorporation of two programs of civil rights consolidation in Reorganization Plan Number 1. The first was implemented by Executive Order 12067 (43 FR 28967; July 5, 1978), assigning to the Equal Employment Opportunity Commission the leadership role for all Federal efforts relating to equal employment opportunity. The second, consolidating the contract compliance programs under parts II and III of Executive Order 11246 in the Department of Labor, was implemented by Executive Order 12086 (43 FR 46501; October 10, 1978).

Also during this same time frame, the President acted to simplify regulatory procedures through the issuance of Executive Order 12044, Improving Government Regulations (43 FR 12661; March 24, 1978). Section 1 of the Executive Order requires that regulations be as simple and clear as possible, and that they achieve legislative goals effectively and efficiently. In addition, Executive Order 12044 requires that regulations impose no unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

The FAA believes that this amendment meets the President's regulatory criteria and has determined that it lends support to the Civil Rights Reorganization Program. In accordance with section 1–304 of Executive Order 12067, the DOT has submitted this amendment formally to the Equal Employment Opportunity Commission for review. In addition, the amendment has been provided for comment to the Office of Federal Contract Compliance Programs, the Department of Labor, and the Department of Justice.

It should be noted that the Civil Rights Reorganization is based not only on the premise that duplication should be avoided, but that effort should be maximized. Section 1–201 of Executive Order 12067 contains a mandate to the Equal Employment Opportunity Commission to that effect. The FAA has conformed the provisions of this amendment to the Executive Order, as discussed below. The discussion is divided into two parts. The first explains major changes in the overall structure of the final rule. The second part deals with specific comments, received during the public comment period.

**General Discussion**

As part of its efforts to avoid overlap and duplication, the FAA has worked closely with the Office of the Secretary of Transportation to coordinate its revision of the amendment with new developments in the Department. These new developments have included the drafting, by the Secretary of Transportation, of a proposed rule for Minority Business Enterprise Programs and a proposed revision to 49 CFR part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964 (See Regulations Agenda, 43 FR 23884, June 1, 1978).

modations, services, and other benefits to persons who may be subject to discrimination on the basis of sex or creed. Section 152.421, as adopted, incorporates by reference all the requirements of 49 CFR part 21, thereby prohibiting discrimination on the basis of sex or creed in FAA Federal financial assistance programs in the same manner that Title VI prohibits discrimination on the basis of race, color, or national origin. 49 CFR part 21 also calls for affirmative action, where appropriate. Incorporation of part 21 requirements by reference will ensure uniformity of treatment of beneficiaries and prevent needless repetition in rulemaking.

The FAA also has deleted proposed sections 152.165 through 152.173, relating to complaints, procedures for effecting compliance, hearings, decisions and notices, and judicial review. Section 152.423 provides for the use of the procedures required in 49 CFR part 21 for these actions. In addition, under section 1.47(f) of the Regulations of the Secretary (49 CFR 1.47(f)), the Administrator of the FAA may conduct investigations as considered necessary to carry out the provisions of the Airport and Airways Development Act of 1970, as amended. The investigation procedures established by the Administrator are contained in 14 CFR part 13, Investigation and Enforcement Procedures, and also may be used for the investigation of noncompliance with this subpart. Section 152.423, as adopted, contains a cross-reference to 14 CFR part 13.

Noncompliance with the requirements of the Department's Minority Business Enterprise (MBE) regulation will be investigated and enforced through the procedures contained in the MBE regulation. Allegations of noncompliance with Federal employment requirements which the Equal Employment Opportunity Commission, the Department of Labor, or other agencies enforce will be referred to those agencies for enforcement. In these instances, part 13 investigative procedures and 49 CFR part 21 procedures will be used to supplement or enhance the investigative and enforcement authority of other agencies. Following a finding on the record by any such agency, the FAA will adopt the finding as its own and determine whether grant-related sanctions should be imposed in addition to the remedies provided, or other sanctions imposed, by that agency. However, when it appears that deferral to the proceedings of these agencies could result in undue delay and lead to the expenditure of Federal funds without compliance with this subpart, the FAA may initiate proceedings.

It should be noted that part 13 investigative procedures will be utilized in conjunction with procedures established by the Office of the Secretary for the receipt of complaints, on-site investigations, and informal resolutions.

The enforcement procedures as made applicable in this amendment have a threefold effect: (1) They do not disturb procedures established by other agencies for other statutes; (2) They make possible an added sanction for employment discrimination; and (3) They do not duplicate the remedies or sanctions provided elsewhere such as debarment of contractors under 41 CFR part 60 (Department of Labor regulations to implement Executive Order 11246); those available through a private cause of action under Title VII of the Civil Rights Act of 1964, as amended; or the sanctions for discrimination on the basis of race, color, or national origin under Title VI of that Act.

A fourth major revision concerns the extent to which employment practices are covered in this amendment. In view of the many specific comments on the employment-related sections of the NPRM, this major change is discussed in part II.

## Discussion of Specific Comments

### *Employment*

Many commenters felt that employment should be excluded totally in a section 30 rule in view of the remedies and sanctions available under Titles VI and VII of the Civil Rights Act of 1964, under Executive Order 11246, and under statutes addressing specific protected groups such as handicapped persons, those over a certain age limit, and veterans.

establishment of positive affirmative action requirements. These affirmative action requirements are designed to strengthen Title VII, which operates largely in response to complaints rather than as an affirmative action tool. Further, the affirmative action requirements contained in this subpart are designed to avoid conflict with requirements that may exist in other programs related to Title VII, including those of the Department of Labor, implementing Executive Order 11246. This subpart also makes possible the imposition of grant-related sanctions for noncompliance with, or discrimination in, employment programs, not possible under Title VII or Executive Order 11246.

The FAA also believes that section 30 requires the coverage of employment not presently regulated by other agencies. Employers with less than 15 employees, for example, are not subject to Title VII of the Civil Rights Act and the regulations of the Equal Employment Opportunity Commission.

While this subpart does not afford a private cause of action to employees or applicants of covered employers to obtain the remedies available under Title VII, they do provide for sanctions against recipients and other covered organizations for employment discrimination. As previously stated, however, this does not impair the rights of complainants to seek remedies from other appropriate agencies or to bring their complaints to the attention of the FAA for referral, investigation, or enforcement through the application of sanctions provided in this support. That is, under section 30, the FAA does not have authority to make legally binding orders with respect to promotion, back pay, reinstatement, and so forth, as the Equal Employment Opportunity Commission and the courts may make under Title VII. However, employers who are found to have discriminated in violation of section 30 are subject to sanctions, such as the termination of Federal funding. As part of the conciliation process (negotiations with a recipient to resolve a finding of discrimination or noncompliance before sanctions are imposed), a recipient may be required, as a condition of a conciliation, to take action to make employees whole in appropriate cases.

Further, many contractors or tenants on airports, who provide services or supplies to recipients and beneficiaries of Federal financial assistance and other covered organizations, are not subject to Executive Order 11246 and the regulations of the Department of Labor. Similarly, some construction contractors are not covered by Executive Order 11246. Where such employers benefit from the provision of Federal financial assistance to a grantee, or where their employment practices impact upon the public which uses the facilities or participates in the programs of a recipient, the FAA believes it should extend the protection of section 30 to the employees and to the applicants for employment. As in the case of Title VII remedies, sanctions available elsewhere, such as debarment of contractors under Executive Order 11246, will not be duplicated. As with Title VII, this means that, under section 30, FAA does not have authority parallel to that of the Department of Labor under Executive Order 11246 to make a legally binding order debarring a contractor for employment-related reasons. Grantees are not precluded from taking contract sanctions against covered organizations that violate their assurances, and, as part of the conciliation process, grantees may be required in appropriate cases to impose contract sanctions, as a condition of a conciliation agreement.

The employment requirements stated in section 152.161 of the NPRM have been replaced by those included within sections 152.407 through 152.411 of this final rule.

The FAA agrees with commenters, however, that record keeping and other administrative burdens relating to employment should be minimized and that the FAA should avoid duplicating the requirements of other agencies. This matter is discussed further in a succeeding paragraph on "Affirmative Action Plans" and related requirements.

*Affirmative Action Plans; Affirmative Action Steps; Nondiscrimination Clauses*

To minimize paperwork and other administrative burdens, the FAA has revised the requirements on nondiscrimination clauses and affirmative action plans it proposed in sections 152.155 through 152.161 of the NPRM. The clauses have been replaced by simplified assurances in revised section 152.405. Section 152.407, as adopted, requires affirmative plans only from (1) airport sponsors that employ 50 or more

stated in section 152.411, in lieu of preparing an affirmative action plan. If these organizations are subject to an affirmative action plan or steps required by another Federal agency or to a State or local plan or steps which meet the requirements of section 152.411, they will not be required to keep a separate written account of their steps. They will be expected to make these records available to the FAA, upon request.

As a general rule, organizations subject to review by another Federal agency will not be reviewed by the FAA. However, the FAA reserves the right to investigate any employment problems of which it becomes aware, to refer them to the appropriate agency for action, or, when it appears that delay could lead to the expenditure of Federal funds without compliance under the Airport Aid Program, to initiate proceedings.

As part of its ongoing program of monitoring the compliance of grantees and other covered organizations, the FAA will "spot check" to ensure that affirmative action plans which are required by the regulations exist and meet applicable standards. This "spot checking" process will be separate from the more detailed compliance reviews which FAA or other compliance agencies undertake of the overall equal employment policies and practices of the grantees and other covered organizations.

Federally assisted construction contractors subject to the goals and timetables established in 41 CFR part 60, regulations of the Department of Labor implementing Executive Order 11246, will not be required to prepare affirmative action plans or to participate in a program of steps beyond those necessary to comply with 41 CFR part 60, or be subject to FAA review.

Federally assisted construction contractors, who are not subject to the goals and timetables established in 41 CFR part 60 (§ 60–4), are required to participate in a program of affirmative action steps, as set forth in section 152.411 of this subpart.

Construction contractors who are not subject to 41 CFR part 60, but who benefit from the Federal financial assistance provided to grantees or who participate in projects that are aviation related, as defined in section 152.403, also will not be required to prepare affirmative action plans. Instead, they will be required to take affirmative action steps as set forth in section 152.411. Unlike Federally assisted construction contractors, they will be subject to FAA review.

*Applicability*

Many of the comments expressed disagreement with the proposal to make the nondiscrimination clauses and affirmative action plans set forth in proposed sections 152.155 and 152.159 applicable to certain lessees and sublessees. Commenters contended that section 30 is applicable only to activities conducted with funds received from grants made under Title I of the Act and that lessees and sublessees receive neither grants nor monies flowing from grants. The FAA concurs to the extent that nonaviation related lessees and sublessees which provide no services to the airport or the airport public are not related sufficiently to the grant program to warrant coverage. Lessees and sublessees who provide goods or services to the airport or to its users or who are aviation related, however, benefit from the development made possible by those grants. Accordingly, the requirements set forth in this final rule are made applicable to lessees and sublessees of this nature.

Similarly, supply, service, and construction contractors whose activities are aviation related but who are not paid with Federal funds, benefit from the development made possible by Federal grants. The requirements set forth in this final rule are applicable to these categories of organizations.

In effect, all grantees under the Act and all organizations on airports which are "aviation-related activities" (including Federally-assisted construction contractors, lessees, and licensees), as defined in section 152.403, are subject to the requirements of this subpart, as specified.

requirements have been modified to fit the size or status of the organizations in question. In brief, reporting requirements will apply as follows:

**1. Construction Contractors and Subcontractors**

Construction contractors and subcontractors, which are subject to E.O. 11246 and the regulations of the Department of Labor (DOL), are not required to submit reports under this subpart. Instead, the FAA will seek an agreement with the DOL on compliance procedures and information sharing, in order to obtain a comprehensive picture of employment practices of Federal and Federally-assisted contractors on airports.

Construction contractors and subcontractors, which are not subject to E.O. 11246 and the regulations of the DOL, and which have contracts of $10,000 or more, are required to submit a compliance report on an FAA form and a statistical report on a Form 257 or any superseding DOL form at the end of the project. For projects exceeding six months, a midway compliance report also is required.

**2. Covered Organizations with 15 or More Employees (Nonconstruction)**

Covered organizations (nonconstruction), with 15 or more employees in the aviation workforce, are required to submit an annual compliance report on an FAA form and an annual statistical report on an EEO–1 or any superseding Equal Employment Opportunity Commission (EEOC) form. Where covered organizations already are submitting the EEO–1 form to another agency, a copy may be used for the FAA statistical submission.

**3. Covered Organizations with Less Than 15 Employees (Nonconstruction)**

Covered organizations (nonconstruction), with less than 15 employees in the aviation workforce, are not required to submit compliance reports. They are required, however, to make available to the sponsor an annual count and breakdown of their employment levels. Sponsors are required to aggregate these figures, including their own, if they have less than 15 employees, and to submit this aggregate statistical report to the FAA on an EEO–1 form or any superseding form of the EEOC.

**4. Covered Organizations Subject to Review or Compliance Reports by Other Agencies**

Covered organizations (nonconstruction), which are subject to review or compliance reports under the regulations of another agency, are not required to submit compliance reports to the FAA. They are expected, however, to make the reports available to the FAA upon request during an investigation of a complaint. In addition, these organizations are required to make the annual EEO–1 statistical submission to the FAA.

In all cases, covered organizations shall submit their reports to the sponsor, either directly or through their prime organizations, if they are subcontractors, sublessees, or other suborganizations. The sponsor is required to transmit these reports to the FAA, in accordance with instructions to be supplied by the FAA.

**Definitions**

Many persons submitted comments concerning the definitions set forth in proposed section 152.153. Most of these commenters stated that ''concession'' should be defined. This term has been deleted from the final rule. To simplify identification of the organizations which are subject to the requirements of this subpart (in addition to the grantees), the term ''Aviation related activity'' has been used.

''Aviation related activity'' is defined as a commercial enterprise operated on the airport pursuant to an agreement with the airport sponsor (or to a derivative agreement), which maintains on-airport employment and (i) is related primarily to the aeronautical activities taking place on the airport, or (ii) provides goods or services to the public which is attracted to the airport by such aeronautical activities,

Twenty-eight commenters opposed retroactive application on the grounds of questionable legality and undue burden on recipients, contractors, and lessees.

The FAA agrees that the provisions of this amendment should not be made retroactive and notes, in this connection, that the terms of the legislation do not impose retroactivity.

Grantees and other covered organizations are required to comply with this agreement as of its effective date. These include grantees made subject to a clause in their grant agreements established December 16, 1976, requiring compliance with any regulations issued to implement section 30, if the Federal financial assistance was approved on or after that date.

**Economic Impact**

Twelve commenters questioned the FAA's finding and determination that the proposed rule did not contain a major proposal requiring preparation of an Inflationary (Economic) Impact Statement. In view of the approach taken in this amendment, significantly reducing the administrative requirements and eliminating the duplication pointed out by commenters on the NPRM, the FAA does not believe an Inflationary Impact Statement is necessary for this final rule. However, as required by the Secretary's Procedures for Simplification, Analysis, and Review (Improving Government Regulations), published March 8, 1978 (43 FR 9582), the FAA has prepared a Regulatory Evaluation, calculating the resulting costs of the requirements on the private and governmental sectors. The Regulatory Evaluation also details the benefits and impacts of this final rule. A copy of the Regulatory Evaluation has been placed on file in the public docket and is available for inspection.

In regard to the requirements which will result through compliance with the Department of Transportation Minority Business Enterprise regulation and incorporation by reference of the amendment to 49 CFR part 21, their inflationary impacts, if any, will be assessed by the Office of the Secretary in conjunction with the NPRMs to be published.

**Effective Date of Record-Keeping and Reporting Requirements**

As adopted by this amendment, the record-keeping and reporting requirements in §§ 152.407, 152.411(c)(1) and (2), 152.415, and 152.417(b) will become effective 30 days after notice has been published in the *Federal Register* that the requirements of those sections have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

**Adoption of Amendment**

Accordingly, part 152 of the Federal Aviation Regulations is amended, effective March 17, 1980.

Compliance with §§ 152.407, 152.411(c)(1) and (2), 152.415, and 152.417(b) is not required until 30 days after a notice of approval of the requirements of those paragraphs by the Office of Management and Budget is published in the *Federal Register.*

NOTE: The FAA has determined that this document involves a proposed regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT:".

(Section 30 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1730); § 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)).)

This action is taken by the FAA in an effort to simplify the grant process.

**FOR FURTHER INFORMATION CONTACT:** Peter T. Gourdouros (APP–510), Office of Airport Planning and Programming, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3050.

**SUPPLEMENTARY INFORMATION:**

**Background**

Interested persons have been afforded an opportunity to participate in the making of this final rule by a Notice of Proposed Rule Making (Notice No. 79–14) issued on August 2, 1979, and published in the *Federal Register* on August 9, 1979 (44 FR 46858). Due consideration has been given to all comments in response to the Notice.

Notice 79–14 proposed to amend part 152, Airport Aid Program, of the Federal Aviation Regulations to provide regulations that are easier to understand and less of a burden on the sponsor or planning agency seeking assistance. The proposed changes were based on the FAA's continuing review of the program, and they implement the President's direction to simplify regulatory procedures, as expressed in Executive Order 12044, Improving Government Regulations (43 FR 12661; March 24, 1978). The Executive Order requires that regulations be as simple and clear as possible, and that they achieve legislative goals effectively and efficiently. In addition, the order requires that regulations impose no unnecessary burdens on the economy, on individuals, on public or private organizations, or on State or local governments.

In order to achieve these goals, the FAA made a comprehensive review of all provisions of part 152. Wherever possible, this amendment simplifies these requirements, and deletes redundant and unnecessary material. As a result, the number of regulatory sections has been reduced from 72 to 41, and, even with the addition of a new appendix, the number of appendices has been reduced from 13 to 4.

Part 152 has been simplified and updated in the following ways: (1) By deleting discussion of FAA policy and procedures that do not impose a requirement on the sponsor or planning agency, and publishing them separately; (2) by deleting explanatory and descriptive material, including some unnecessary definitions, and making them available in advisory publications; (3) by removing lengthy technical requirements and incorporating them by reference in part 152; (4) by omitting references to out-of-date provisions and revising the part to incorporate changed requirements of statutes other than the Airport and Airway Development Act of 1970 (AADA); (5) by consolidating certain provisions, eliminating redundant provisions and reorganizing the entire part on a chronological basis; (6) by revising the part to reflect certain changes already made in the Airport Aid Program as a result of changes in the AADA; (7) by adding a new appendix that publishes the assurances made by the applicant for an airport development grant or an airport planning grant at the time of application; (8) by reducing the number of requirements imposed on applicants to the extent that it is practicable and consistent with the FAA's responsibilities under the AADA; and (9) by deleting certain appendices that set out the requirements of other Federal agencies with respect to the administration of Federal grant programs and replacing them with references to those requirements.

**Comments**

The FAA received 8 public comments in response to Notice 79–14, all of which favored the adoption of the revised part. Commenters stated that they expected the revised rule to "streamline the application process and lessen our paperwork burdens" and "greatly increase a sponsor's ability to use and understand part 152."

**Project Eligibility**

Some commenters objected to proposed § 152.107, which requires that a project for airport development must involve more than $25,000 to be eligible for consideration. For a number of reasons the commenters

master planning projects, determined to have areawide significance, into a unified planning work program. The commenter contended that this would inject areawide agencies with no implementing powers into the planning process, thus making planning ineffective.

The intent of this incorporation is to improve coordination between areawide transportation planning and planning at individual airports. The unified planning work program serves as the vehicle for ensuring adequate consideration of airport development in relation to ground transportation systems. For this reason the rule has been adopted as proposed.

**New Structures**

Another commenter suggested that proposed § 152.203 should be revised to permit reimbursement for the cost of a new structure, when it would be less than the cost of removal or relocation of an existing building. However, expenditure of funds for the construction of any building is prohibited by the AADA, except where the act specifically authorizes it.

**New Legislation**

Some commenters suggested that the revision of part 152 be delayed until new legislation is enacted. Although the Airport and Airway Development Act of 1970 expires on September 30, 1980, a significant portion (approximately $400,000,000) of the fiscal year 1980 authorization ($640,000,000) will not be obligated until the fourth quarter of the fiscal year. Accordingly, a majority of the 1980 grants will be issued under the revised regulations, providing experience with, among other things, its waiver, exemption, and certification provisions. Experience with revised part 152 will provide an important bridge to new regulations implementing post-1980 legislation.

**Changed in the Final Rule**

Some changes have been made in the rule as adopted based on comments received and further consideration by the FAA. These changes are discussed below.

**§ 152.3 Definition of Audit**

The definition of the term "audit" in proposed § 152.3 has been revised to incorporate the requirements of Attachment P of Office of Management and Budget Circular (OMB) A–102 (44 FR 60958). That attachment sets forth uniform administrative audit requirements for federal grants-in-aid to state and local governments.

**§ 152.5 Exemptions**

Section 152.5, as adopted, provides for the required publication of a summary of a grant or denial of a petition for exemption in the *Federal Register.* This publication provision parallels that of § 11.27 of the Federal Aviation Regulations (14 CFR 11.27), which provides procedures for processing petitions for exemption from Federal Aviation Regulations other than part 152. However, since exemptions under part 152 are processed by regional offices and basically concern local situations which are of limited interest to the general public, publication of the petition for exemption itself has not been provided for.

**§§ 152.103 and 152.105 Eligible Sponsors and Planning Agencies**

Sections 152.103 and 152.105 have been corrected to provide that applicants for airport development projects and for airport master planning grants must be public agencies as required by the Airport and Airway Development Act of 1970.

Sections 152.111(f)(7) and 152.113(b)(6) have been expanded to require submission of the civil rights assurances required by § 152.405 of new subpart E with each application.

### § 152.111 Compliance with Environment Order

Proposed § 152.111 would have required that a sponsor's application or preapplication for Federal assistance be accompanied by an environmental impact assessment report that complies with the applicable DOT and FAA environmental orders. In the rule, as adopted, the reference to the applicable FAA order has been updated to refer to FAA Order 1050.1C (45 FR 2244; January 10, 1980). The reference to the DOT order has been eliminated since the FAA order incorporates the applicable DOT requirements, and compliance with it results in compliance with the DOT order. Also the terminology used in the rule has been updated, and the rule has been revised to make it clear that an environmental assessment must be submitted only if one is required by the FAA order.

The FAA is currently issuing an Airport Environmental Handbook that contains detailed guidance for considering environmental impacts of Federal airport actions. In the near future, this handbook will be incorporated by reference into part 152, and compliance with it will be required for airport development projects.

### § 152.115 Reduction of U.S. Share

A new paragraph has been added to § 152.115 to provide that when project work for which costs have been incurred is deleted from a grant agreement, the Administrator reduces the maximum obligation of the United States proportionately, based on the cost or value of the deleted work as shown on the project application. This is required by the FAA's contract regulations which reflect the general rule of law that the Government does not have authority to waive or surrender gratuitously any vested right or interest acquired by contract.

### § 152.205 United States Share of Project Costs

Section 152.205 has been revised to implement the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193; February 18, 1980) which raises the United States share of allowable project costs to 90 percent for grants made from funds for fiscal year 1980.

### § 152.305 Accounting Records

In lieu of the list in proposed § 152.305(a) of cost classifications for the sponsor's accounting records, the rule, as adopted, merely references the classifications set forth in Standard Form 271. This form, entitled "Outlay Report and Request for Reimbursement for Construction Programs," is published in OMB Circular A–102 (42 FR 45841), and is used by the sponsor in requesting reimbursement under its grant.

### Appendices

The titles of appendices A and C have been revised to make clear their content and distinguish them from one another.

Changes have been made in proposed appendix C to reflect the revision of Attachment O to OMB Circular A–102 (44 FR 47874; August 15, 1979). The revised Attachment O provides for, and encourages, grantor agency review of grantee procurement systems.

Attachment O provides that, when a grantee procurement system meets the standards of Attachment O, it may be certified by the grantor agency, thus reducing the need for individual pre-award contract reviews by the grantor agency. Section 1 of appendix C, as adopted, provides for reviews of this kind by the FAA, when funding and time permits. To be consistent with this review procedure, the individual

## Assurances

The assurances contained in appendix D which each sponsor or planning agency must submit with its application have been updated to reflect those currently in use.

Assurance 7, Access for the Handicapped, has been revised to require compliance with part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance, which was adopted by the Department of Transportation on May 25, 1979 (49 FR 31442; 14 CFR part 27).

Assurance 17 has been revised to provide that the 20 year limitation on the effectiveness of the assurances does not apply to those affecting the use of real property acquired with Federal funds. This is consistent with Attachments N, Property Management Standards, of OMB Circular A–102 which requires that the grantee use that property for the authorized purpose of the original grant as long as it is needed.

## Economic Impact

While the actual cost benefits of this revision of part 152 cannot be readily established, the benefits to sponsors and planning agencies will be tangible, and the government sector will benefit from a more efficient program. Simplification and clarification of the part, as well as improvement of its organization, will yield tangible administrative benefits to applicants and grantees.

The updating of some provisions will result in minor administrative costs to the applicant, but the over-all impact will be important savings in time and money.

Savings will result from no longer requiring the submission of certain documentation. Under the revised part, preapplications are no longer required for projects under $100,000. The Administrator may waive an application requirement where an item is already available to the FAA or where a substitute should be accepted. The amendment provides for the acceptance of the sponsor's certification that it has complied with a statutory or administrative requirement, in lieu of demonstrating compliance.

Sponsors will benefit from the issuance of exemptions from requirements of part 152 where conditions beyond a sponsor's control make it difficult for it to comply with specific requirements.

## Adoption Date

Because of the benefits to sponsors and planning agencies that will result from this revision of part 152, good cause exists for making this amendment effective on publication in the *Federal Register* (May 22, 1980).

## The Amendment

Accordingly, part 152 of the Federal Aviation Regulations (14 CFR part 152) is amended, effective May 22, 1980, by revising subparts A, B, C, and D; by adding a new subpart F; by revising appendices A, B, C, and D; and deleting appendices E through M.

(Airport and Airway Development Act of 1970, as amended (49 U.S.C. § 1701 *et seq.*); Sec. 1.47(f)(1) Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)).)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT:".

actions. These amendments also add a provision requiring compliance with those orders to Federal Aviation Regulations dealing with release of airport property from surplus property disposal restrictions. These amendments are necessary because of recent revisions in FAA environmental guidance required by the Council on Environmental Quality. The revisions are expected to result in a reduction of paperwork, the reduction of delays, and the production of better decisions.

**FOR FURTHER INFORMATION CONTACT:** Lynne Sparks Pickard, Community and Environmental Needs Division (APP–600), Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3263.

## SUPPLEMENTARY INFORMATION:

### General

These amendments revise references to procedures for processing airport development actions affecting the environment in part 152, Airport Aid Program, and part 154, Acquisition of U.S. Land for Public Airports under the Airport and Airway Development Act of 1970, of the Federal Aviation Regulations. Those procedures are contained in appendix 6 to FAA Order 1050.1C, "Policies and Procedures for Considering Environmental Impacts," and in FAA Order 5050.4, "Airport Environmental Handbook." part 155, Release of Airport Property from Surplus Property Disposal Restrictions, is also being amended to require the submission of an environmental assessment in conformance with those orders.

Interested persons were afforded an opportunity to comment on appendix 6 of proposed FAA Order 1050.1C by a notice in the *Federal Register* on June 4, 1979 (44 FR 32094) and by direct mailing of advance copies of draft appendix 6 to aviation organizations. Draft appendix 6 contained procedural and substantive guidance for airport environmental documents and included the material that has now been printed separately in the new Airport Environmental Handbook. This handbook is being published elsewhere in this issue of the *Federal Register* (45 FR 56624; August 25, 1980).

In addition, the regulations of the Council on Environmental Quality (CEQ), which FAA Order 1050.1C implements, were published for comment in the *Federal Register* on June 9, 1978 (43 FR 25230). They had already received extensive input from the public, the business community, State and local governments, and Federal agencies. In view of these numerous opportunities for public review and comment and in light of the comments received in response to the June 4, 1979, notice, the FAA has determined that a formal notice of proposed rule making would not result in the receipt of additional useful information.

### CEQ Regulations

On November 29, 1978, the Council on Environmental Quality published its final regulations establishing uniform procedures for implementing the procedural provisions of the National Environmental Policy Act (43 FR 55978). The purpose of those regulations is to reduce paperwork, reduce delays, and produce better decisions. Under part 1507 of the CEQ regulations (49 CFR part 1507), Federal agencies must adopt any necessary implementing procedures, after public comment and CEQ review.

FAA Order 1050.1C, published in its final form on January 10, 1980 (45 FR 2244), amends FAA's environmental policies and procedures in response to the CEQ regulations. The order is a comprehensive treatment of the environmental process for the broad range of FAA programs and projects. Appendix 6 to the revised order, like appendix 6 to the previous order (FAA Order 1050.1B), applies to specified Federal actions associated with airport programs. The FAA has also developed new Order 5050.4 which is a self-contained handbook for Federal airport actions. It includes the text of appendix 6, material cross-referenced in that appendix, and substantive detailed guidance on the form and content of environmental assessments, environmental impact statements, and findings of no significant impact. Compliance with Order 5050.4 assures compliance with appendix 6 to FAA Order 1050.1C.

unless the sponsor qualifies as a joint lead agency.

In accordance with § 1506.5(c) of the CEQ regulations (40 CFR 1506.5(c)), a contractor preparing draft and final environmental impact statements must be selected by the lead agency or by a cooperating agency, rather than by the airport sponsor. The contractor must execute a disclosure statement specifying that it has no financial or other interest in the outcome of the project.

Additional airport actions have been specifically identified as categorically excluded from environmental processing requirements, based upon FAA experience with judging which types of actions have the potential for significant impacts and which do not.

The applicability of procedures to conveyances of airport land and to releases of airport land have been further explained to clarify previous uncertainties in interpretation.

The application of design, art, and architecture to airport projects has been provided for in accordance with Notice DOT N5610.4, "Implementation of Decision to Address Environmental Design Considerations in Environmental Impact Statements" (February 27, 1978).

The format and content of the environmental assessment, environmental impact statement, and finding of no significant impact have been revised to comply with the letter and spirit of the CEQ regulations as well as regulations implementing other environmental statutes.

Thresholds of significance have been delineated for each category of potential environmental impact in order to assist airport sponsors and FAA field personnel in evaluating whether or not impacts are significant. In addition, each environmental impact category has been updated to reflect recent environmental laws and regulations.

The Day/Night Level (Ldn) is the FAA's acceptable cumulative noise methodology for use in initial noise analysis. (An exception is the use of the Community Noise Equivalent Level where required to meet state requirements as in California.) Other cumulative noise methodologies, including Equivalent Noise Level (Leq) which would have been allowed under the proposed revision of Order 1050.1C, have been deleted, in the interest of having one cumulative noise methodology which is acceptable to the FAA, the Environmental Protection Agency, and the Department of Housing and Urban Development.

Sponsors will no longer be required to make available for public hearings an environmental assessment on runway extensions which are not major runway extensions. Runway extensions that are not considered major are excluded from the requirement to prepare an environmental assessment, if they do not otherwise have likely significant impacts.

A new procedure has been provided for formal FAA acceptance of a sponsor's environmental assessment. After this acceptance the assessment becomes a Federal document in accordance with §§ 1506.5(b) and 1508.9 of the CEQ regulations (40 CFR 1506.5(b) and 1508.9).

Assurances, findings, and conclusions that may be required for an action have been made as part of the decision on the action, rather than part of the environmental approval. CEQ regulations require distinct separation of the environmental approval and the Federal decision on the proposed action.

The FAA's application of low capital or noncapital alternatives to proposed actions has been emphasized and clarified in accordance with commitments made to CEQ to strengthen this area.

The implementation of commitments to mitigate environmental impacts has been emphasized and expanded upon in accordance with § 1505.3 of the CEQ regulations (40 CFR 1505.3).

Tiering, as defined in 40 CFR 1508.28, has been specifically applied to types of airport actions.

Finally, in accordance with DOT Order 5610.1C "Procedures for Considering Environmental Impacts" (44 FR 56420; October 1, 1979), time limitations on the validity of draft and final environmental impact statements have been established; prior finding affirmations have been deleted and replaced by written

Section 152.111(c)(7) requires that the sponsor submit an environmental assessment with its preapplication for Federal assistance, if one is required by appendix 6 to FAA Order 1050.1C, "Policies and Procedures for Considering Environmental Impacts." The reference to this revised order was added to part 152 by Amendment No. 152–10. The section is now being amended to require that the assessment also be prepared in conformance with FAA Order 5050.4, "Airport Environmental Handbook."

This same addition has been made to § 152.117(b)(4), of part 152, which requires that a notice of opportunity for a public hearing state that an environmental assessment is available for review, if an assessment is required. It has also been made to paragraph II B of appendix D to part 152, which requires a sponsor seeking FAA approval of a new or revised airport layout plan to submit an environmental assessment with the plan.

Section 154.7(b)(14) has required the submission of an environmental impact assessment report, prepared in conformance with applicable DOT and FAA orders, with an application for conveyance of a property interest under part 154. This amendment updates that requirement by referencing FAA Orders 1050.1C and 5050.4. It also eliminates reference to the DOT order, since the handbook incorporates the applicable DOT requirements and compliance with it results in compliance with the DOT order. The terminology in this section has also been updated, and the section has been revised to make it clear that an environmental assessment must be submitted only if one is required by the FAA orders.

The requirement for an environmental assessment has been added to part 155. New § 155.11(c)(12) will now require the submission of an environmental assessment, if one is required by appendix 6 and the handbook, with a request for release from surplus property disposal restrictions.

Since these amendments relate to public grants, and the implementation target date set by CEQ was July 30, 1979, good cause exists for making them effective in less than 30 days.

**Cost Evaluation**

Compliance with FAA Order 5050.4 is expected to bring about the results which CEQ's regulations aim at, namely the reduction of paperwork, the reduction of delays, and the production of better decisions. The final regulatory evaluation prepared in connection with this project, and available in the regulatory docket, describes these benefits at length.

Changes that will reduce paperwork include reducing the length of environmental impact statements, narrowing the scope of the environmental impact statement process, and eliminating duplication wherever possible. Delays will be reduced by, among other things, integrating the assessment process into early planning, emphasizing interagency cooperation, and ensuring the swift and fair resolution of disputes. Finally, the quality of decisions is expected to be better because these revisions will help ensure that environmental information is of high quality, accurate, objective, subjected to public scrutiny, and available to public officials before decisions are made and before actions are taken.

The new procedures are expected to be somewhat more costly to the Federal Government than the previous procedures. The reason for this is CEQ's emphasis on and specific delineation of certain Federal responsibilities in the assessment process. Under the CEQ regulations, draft and final environmental impact statements must be prepared directly by the lead agency or under direct contract to the lead agency. Federal agencies are to serve as cooperating agencies for the preparation of the environmental impact statements. Interdisciplinary skills are demanded of impact statement preparers, and a list of the preparer's professional qualifications is required in impact statements. A greater emphasis has been placed on Federal independent evaluation of, and responsibility for, analyses of environmental impacts, and on monitoring mitigation measures and reporting on this monitoring. These and other responsibilities will result in increased cost to the governmental sector.

In this connection the FAA has established a number of environmental positions within the Airports Program to augment skills and reduce environmental processing delays. However, these positions are being filled within authored levels and will result in no increase in cost to the program.

instead of by, or under direct contract to, sponsors. A decrease in the economic burden on sponsors will be reflected in a decrease in the amount of Federal grant-in-aid funds (Airport Development Aid Program and Airport Planning Grant Program) paid to sponsors to fund the allowable Federal percentage of environmental study efforts.

An allowable alternative which the CEQ regulations and FAA Order 5050.4 recognize is for a draft and final impact statement to be prepared by a contractor selected and guided by the FAA, but paid by the sponsor. To the extent that Federal funds are insufficient to accommodate the demand, sponsors may elect this option. The total dollar value estimated to be required under the new regulation is not affected by this option.

In summary, to the extent that there will be increased direct Federal costs in preparing environmental documents for the Airports program, there will be decreased expenditures on the part of airport sponsors and the FAA's airport grant programs.

**Clearinghouse Review**

Part 152 of the Federal Aviation Regulations applies to the Airport Development Aid Program and the Planning Grant Program. These programs are listed in the Catalogue of Federal Domestic Assistance as program numbers 20.102 and 20.103, respectively. The procedures of Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and Federally-assisted programs and projects apply to these programs.

**Adoption of the Amendment**

Accordingly, parts 152, 154, and 155 of the Federal Aviation Regulations (14 CFR parts 152, 154, and 155) are amended, effective August 25, 1980.

(Secs. 11 through 27 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1711 through 1727); § 1.47(f)(1), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(f)(1)); 50 U.S.C. App. §§ 1622–1622c.)

NOTE: The FAA has determined that this document involves regulations which are not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by writing to Lynne Sparks Pickard, Community and Environmental Needs Division (APP–600), Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591.

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## Amendment 152–12

## Energy Conservation by Recipients of Federal Financial Assistance

**Adopted: August 21, 1980** **Effective: October 1, 1980**

**(Published in 45 FR 58022, August 29, 1980, OST Docket No. 66)**

**SUMMARY:** In compliance with a recent Executive Order, DOT issues regulations requiring conservation of petroleum and natural gas in programs receiving Federal financial assistance administered by DOT.

**FOR FURTHER INFORMATION CONTACT:** On the general DOT approach in this program—Angus Duncan, Director, Office of Energy Policy, P–6, Department of Transportation, Washington, DC 20590

financial assistance to take actions which maximize the efficient use of energy and conserve natural gas and petroleum in programs funded by those agencies. Included among those actions are identification of those financial assistance programs which offer opportunities for significant conservation of petroleum and natural gas by recipients of the assistance and issuance of regulations imposing conservation requirements as a condition of continuing to receive the assistance. Included in the NPRM were programs of the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), National Highway Traffic Safety Administration (NHTSA), and Urban Mass Transportation Administration (UMTA).

**General Discussion of Comments**

DOT received more than 80 comments from agencies and individuals on the May 7 NPRM. The greatest number of comments concerned the need for more assistance—both technical and financial—to implement the rules, particularly financial assistance for transit and high-occupancy vehicle facilities. DOT recognizes the need to assist State and local agencies in their efforts to ensure that transportation programs contribute to the national goal of significantly reducing petroleum consumption.

With regard to providing technical assistance, the DOT agencies whose programs are covered by this rulemaking plan to expand training and information sharing activities to ensure that the latest state-of-the-art in energy conservation planning, practices, standards, and technology is made available to program constituents. These activities are further discussed in the subsequent sections of this notice, which cover individual agency actions.

On the question of financial assistance, DOT policies, budget requests, and legislative proposals in recent years have increasingly emphasized programs that will reduce the energy requirements of the transportation sector. DOT has requested $24.5 billion in authorizations for public transportation grant programs for FY 81–85; this is well over double the funding levels for the past five-year period. As many comments acknowledged, these regulations focus on the planning process required by modal agencies as the best means of incorporating energy conservation concerns into the nation's transportation system. Recognizing the need for additional funding for energy-related planning, DOT has requested an additional $15 million in FY 81 appropriations for UMTA-supported energy conservation and contingency planning. Given the number of State and local agencies which report transportation-energy planning activities already underway at the current funding level, DOT believes this increase should be sufficient to support implementation of the new planning requirements in FY 81. DOT also has proposed a new incentive program to make more efficient use of the private automobile. The auto-use-management program, if enacted, would encourage States to use federal-aid highway funds for more energy efficient projects, such as ridesharing activities, public transportation, fuel-efficient driver education, and bicycle and pedestrian facilities. While these requests have not yet been approved by Congress, DOT expects that a substantial part, if not all, of these additional resources will be available for FY 1981. As with other actions being taken to implement Executive Order 12185, DOT will continue to review the adequacy of resources to meet program requirements during the coming year.

DOT also received a number of comments concerning a potential increase in the amount of paperwork required of grantees. In implementing Executive Order 12185, DOT has chosen, wherever possible, to use its existing processes and to strengthen current regulations rather than developing separate processes and monitoring requirements for energy assessments. The regulations being adopted with this publication will be the responsibility of those State and local agencies which currently comply with program regulations. In many DOT programs, consideration of energy conservation has been a stated goal or explicit requirement for the past several years. These regulations give more specific direction on the types of activities that will achieve the energy conservation goal and at what point in the planning or project development process these activities should take place. For some programs DOT also has clarified the actions to be taken if energy conservation is not adequately considered in transportation planning or project development. By amending existing regulations, DOT believes that the need for separate documentation and additional staff will be very limited.

DOT will review its energy assessment requirements to consider whether these requirements should be maintained, vacated, or considered satisfied by compliance with a BEPS-certified State building code.

Pursuant to the rules promulgated in this document, energy assessments, where required for building constructed or remodeled using DOT funding assistance, should consider the following:

1. Overall design of facility or modification and alternative designs;

2. Materials and techniques used in construction and rehabilitation;

3. Special or innovative conservation features that may be used;

4. Fuel requirements for heating, cooling, and operations essential to the function of the structure, projected over the life of the facility and including projected costs of this fuel; and

5. Kind of energy to be used, including:

(a) Consideration of opportunities for using fuels other than petroleum and natural gas; and

(b) Consideration of using alternative, renewable energy sources.

These energy assessments may use any accepted and recognized methodology appropriate to project needs. DOT recommends that applicants consider the DOE's Methodology and Procedures for Life Cycle Cost Analyses as set out in 10 CFR part 436. The most recent methodology can be obtained by contacting Jack Vitullo, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9467.

A large number of comments also were received expressing concern about the relationship between DOE State gasoline consumption targets and the regulations proposed by DOT. There was some misunderstanding about how DOT intended to link the two, particularly given the generally long-term nature of much transportation planning and the short (three-month) life span of the DOE targets. DOT encourages the adoption of energy conservation goals by State and local governments to support the broad national goal of significantly reducing the consumption of petroleum and natural gas. These conservation goals may be based on projections of the DOE-established State fuel consumption targets, or other targets adopted by States, by local governments, or by metropolitan-wide jurisdictions on their own initiative. This would allow State and local governments, including transportation agencies, to adopt goals that project greater savings of oil (and consequent savings to their citizens) than the DOE voluntary targets, and that address conservation of fuels other than petroleum, such as natural gas. DOT believes that such goals should encompass both long-term transportation energy savings, and savings that can contribute to achieving the three-month DOE-set targets.

Use of DOE quarterly State targets as one basis for establishing local goals or longer-term State goals helps provide State-to-State consistency, and links national energy conservation goals to national transportation concerns. For these reasons, the use of these targets to support conservation efforts is encouraged, but not required.

DOE is required under the Energy Security Act of 1980 to establish, by February 1, 1981, national end-use energy consumption targets for 1985, 1990, 1995, and 2000. These targets, where they can be disaggregated by fuel, mode, and State, can provide a necessary longer-term national framework for transportation energy use targets and conservation programs. DOT will provide all available information, including disaggregations, to agencies receiving assistance from DOT.

Specific reference to "established energy conservation targets" has been modified in several places to reflect a more encompassing reference to energy conservation targets. DOT assumes that DOE's and other targets will be a basic element of State and local energy conservation goals and objectives, and the reference to targets in the regulation should be viewed within the broader context.

that the process which has resulted in these final rules be repeated annually. Consequently, the public should expect DOT to publish in the *Federal Register*, approximately one year after these rules take effect, an invitation for public comment on how well these rules have worked, what changes may be required, and what programs should be added or deleted. This does not mean that we do not want to be kept apprised during implementation of any problems that arise. It means simply that a structured review will take place next year.

## Federal Aviation Administration

*(For both FAA programs listed, contact Charles Hoch, (202) 755–9717)*

### Public Comments on Proposed Rule for Airport Development Aid Program

*Background.* The proposed change to part 152 would have required that sponsors in the Airport Development Aid Program (ADAP) accomplish an energy assessment and a certification to comply with findings for each building construction or modification which exceeds $50,000 in cost. It also would have required a sponsor to utilize fuel and energy conservation practices in the operation and maintenance of the airport and to encourage airport tenants to use these practices. The proposed change to part 152 had originally been printed as subpart F (§§ 152.501–152.509) in the May 7, 1980, *Federal Register.* These changes are now incorporated in subpart G (§§ 152.601–152.609), because a new subpart F has been added since the NPRM was published on May 7, 1980.

Some wording in subpart G of part 152 has been changed to clarify the rule. As defined in § 152.605, "Building Construction" and "Major Building Modification" will include only buildings which receive Federal assistance instead of buildings which are eligible for Federal assistance. In § 152.607, the requirement to furnish a certification to comply with energy assessment findings to the FAA has been deleted, because the provision for certification is already incorporated in § 152.7 of the regulation. In § 152.605 the definition of an energy assessment has been modified slightly to conform with the DOT-wide definition.

The $50,000 cost figure for building construction and modification has been revised upward to $200,000. This change was the result of further study and consideration by FAA. It was found that an insignificant number of buildings fall within the $50,000–$200,000 cost range. Additionally, it is not desirable to create a situation where the cost of an energy assessment represents a significant proportion of the cost of the building construction or modification itself. This could occur if the $50,000 figure had prevailed. Thus, raising the cost minimum will result in an improved application of the rule. The change will be reflected in § 152.605 of subpart G.

Guidelines to aid airport sponsors in making an energy assessment will be issued by January 1981. The criteria for judging the acceptability of an energy assessment will be based on its scope, content, and comprehensiveness. The energy assessment will include an analysis of alternatives for achieving the desired objectives and recommendations for selection of appropriate alternatives. The energy assessment will be submitted for FAA approval along with the plans and specifications.

*Comments.* The requirements for sponsors participating in ADAP were the subject of varied comments and suggestions. The comments indicated widespread public support for the concept of energy conservation. The commenters expressed differing views on how this concept should be applied through Federal regulation.

*Assessment Requirement.* One commenter pointed out that the wording of §§ 152.505 and 152.507 would have required an energy assessment on all buildings eligible for Federal assistance. It was suggested the wording be changed so that only buildings which actually received Federal assistance would be affected by the rule. Since the rule is intended to apply only to those buildings which receive funds from ADAP, the wording of those sections has been changed as suggested.

*Equipment Eligibility.* One commenter recommended that FAA establish a policy that clearly includes the eligibility of energy-saving equipment as part of terminal building utility systems. Under current

may be considered.

*Limiting Federal Aid.* One commenter suggested that ADAP funds be limited to airports serving commercial or commuter customers. Airports used mostly for pleasure or recreation should be excluded. The legislation which authorizes ADAP provides grant assistance for both general aviation and air carrier airports, therefore, no distinction is made in this rule.

*Conservation Practices.* One commenter stated that sponsors should be required to consider and, whenever feasible, abide by energy conservation practices and techniques. Section 152.609 of the regulation will accomplish this.

*Simplicity.* Several commenters felt that the rule and compliance procedures should be kept simple. For example, one commenter suggested replacing the required energy assessment for each project costing over $50,000 with a letter from the airport manager. The letter would state that the airport manager has or will develop a total energy conservation program for his airport within a reasonable time. FAA agrees that rules and compliance procedures should be as simple as possible. We believe that this rule modification implements Executive Order 12185 in a simple, effective manner.

*Airport Systems Planning.* One commenter recommended that airport systems planning include an element which would assess the energy impact of growth alternatives. Consideration of energy factors during the planning process is already allowed under the existing regulation. An element of a systems plan covering energy impacts would be eligible for Federal assistance when it is found to be a reasonable and necessary part of a system plan. Such planning is not required under this regulation, but is encouraged by FAA.

*Airport Master Planning.* An element of a master plan covering energy impacts would also be eligible for Federal assistance when it is determined to be a reasonable and necessary part of a master plan or update of a master plan. Such planning is not required under the regulation, but is encouraged by FAA.

*Airport Energy Plan.* DOE recommended that each airport be required to submit a plan to FAA and DOE specifying fuel and energy conservation practices. An airport energy plan may become a requirement at a later date; however, the present level of experience and information now available in FAA indicates that such a requirement for all airports would probably not produce benefits commensurate with the cost and administrative burden to sponsors. Some airports, however, may benefit from an overall energy plan and FAA encourages these airport operators to develop such a plan. Such plans would be eligible for Federal assistance if accomplished within the scope and intent of an airport master plan project.

FAA is developing an energy-efficient ground operating plan for Washington National and Dulles International Airports. This plan may serve as a model for other airports in the future. It should be noted that this ground operating plan was described as a "policy" in the May 7, 1980, NPRM which was misleading. The distinction is that the language used in the NPRM is overly broad and could be construed to incorporate such activities as operations scheduling, and approach and departure procedures. This was not the intent of the plan.

*Noncompliance.* One commenter recommended that funds not be withheld if there is noncompliance with part 152. Withholding project funds is an appropriate sanction for violation of any of the requirements in part 152, and is the sanction called for in E.O. 12185.

*Runways and Terminals.* One commenter suggested that energy considerations should be utilized in the design and construction of runways and terminal facilities. Currently, the rule is limited to the design and construction of terminal buildings. FAA is not imposing energy conservation requirements on runways because a positive relationship among the costs, benefits, and consequences of such regulation does not exist at this time. The rule may be expanded to include runways and other facilities at a later date, if it is shown to be feasible.

construction projects which have no bearing on energy consumption. FAA believes that any building construction or modification in excess of $200,000 (using Federal assistance) would have an impact on energy consumption and thus should have an energy assessment. If a building has no impact on energy consumption, the assessment can simply show that fact.

*Energy-Saving Suggestions.* Many commenters sent in various suggestions on ways to conserve energy at airports. All of the feasible suggestions will be considered in the development of a related Advisory Circular concerning energy assessments at airports.

*Cost of Assessments.* Some commenters stated that the rule would only add cost and administrative burden upon sponsors seeking ADAP funds. It was suggested that the burden has become so great for small airport operators that some sponsors are inhibited from seeking funds.

It is true that the rule may add some cost for additional analysis and design. However, these costs should be recoverable over time through the reduced energy costs of operating buildings designed to be energy efficient. Also, FAA has raised the minimum cost level to $200,000, which should lessen the proportion of added costs.

*Review Procedures.* One commenter stated that subpart F, (now subpart G) contained no provisions for review of administrative decisions concerning acceptance of the energy assessment by FAA. Subpart G is subject to the general compliance procedures which apply to all requirements of part 152. The procedure is described in the new subpart F.

**Public Comments on Proposed Rule for Aircraft Loan Guarantee Program**

Numerous comments were filed with respect to the proposed amendment of 14 CFR part 199. The amendment provided that no loan which violated national policy with respect to energy conservation would be guaranteed; and required each applicant for a loan guarantee to submit an energy conservation plan "formulated by the carrier to whom the loan will be made." The amendment further provided that failure to submit an acceptable energy plan could be grounds for rejection of an application.

Several commenters have taken issue generally with the need for additional energy conservation regulations. One commenter has suggested that existing rules and regulations with respect to energy are more than sufficient, while another commented that new rules should be adopted only after present practices are determined to be insufficient.

FAA acknowledges that any regulation which imposes new requirements necessarily adds an additional burden on a regulated industry. The issue is whether the social benefit to be derived from the regulation, or its administrative necessity, offsets the burdens imposed. In analyzing this issue, the effect of existing Federal and State regulation must certainly be taken into account.

In the case of aircraft purchase loans, FAA recognizes that such loans are essentially commercial in nature, and that air carriers are subject to the discipline of the market place when selecting aircraft for use in their operations. One commenter has suggested that additional regulation of air carriers with respect to energy conservation is unnecessary, because the escalation in price of aviation fuels leads carriers to conserve as a matter of good business judgment. FAA agrees that such economic considerations are a powerful spur to conservation. The amendments to part 199 proposed on May 7, 1980, were intended to assist rather than impede the operation of these natural market factors.

The bulk of the comments received dealt with the adequacy of specific provisions of the proposed amendment. Three general exceptions were taken to the amendatory language; that the proposed rule was not sufficiently specific to give fair notice of FAA's requirements; that the paperwork burden created by the proposed rule far outweighed any possible benefit from it; and that the proposed rule was potentially, if not actually, inflexible, and should be amended to allow implementation of projects which are not inherently conservative of energy.

day operations. Additionally, it is not clear that meaningful general standards of efficiency could be developed. Many variables are involved in the fuel efficiency of an aircraft. These include aircraft weight, speed, and altitude of operations. These variables are a function of the type of market being served (i.e., vary with route, distance, cargo or passenger operations, and load factor). In this, the benchmark of "fuel efficiency" becomes a very difficult parameter to quantity. For example, one aircraft may be more efficient (in terms of pounds of fuel burned per nautical mile) than another at high altitude; while their order of efficiency may well be reversed at a lower altitude. Other variables which affect fuel use include seating capacity, cargo carrying space, and anticipated load factors in specific markets. Because load factors may change over time, the carrier must also be free to redeploy its fleet to optimize its efficiency. For these reasons adoption of general, quantified fuel use standards for the loan guarantee program would be premature at best.

(b) While RNAV navigation systems promise potential fuel savings as a result of more direct flight paths, mandatory installation of this equipment in guaranteed aircraft at this time would be premature. RNAV is useful on flights transiting medium and large hubs where present traffic flow patterns have resulted in substantial airway development and some circuitous flight paths to separate traffic. Before RNAV can be considered useful in this environment, FAA needs to establish acceptable RNAV routes that do not infringe on existing airways. While such routes are presently being considered a sufficient number of routes has not yet been found acceptable to merit mandatory installation of RNAV. Further, flights between small communities have always been accomplished in a direct route without RNAV equipment.

(c) It is not clear at this time whether, and to what extent, aircraft engine pollution standards within FAA's jurisdiction significantly impact energy use. The Environmental Protection Agency (EPA) is responsible under the Clean Air Act for assessing and, if necessary, for establishing aircraft engine emission standards. With regard to aircraft noise pollution, which is within FAA jurisdiction, the FAA recognizes that potential tradeoffs may exist between energy conservation and noise control objectives. This matter was considered in the development of existing standards and will be considered in all new noise standards or changes to existing standards.

(d) Under the proposed amendment to part 199, FAA did not propose to monitor a carrier's day-to-day compliance with its energy conservation plan, or otherwise to supervise the detailed operation of the carrier. Rather, the intent was to evaluate the feasibility of the plan submitted; to execute the loan guarantee only if the plan met FAA standards; and to exercise general oversight of the carrier as a part of administration of the loan guarantee. No new procedure was deemed necessary for this purpose.

Many commenters have argued that the proposed rule, with its required energy conservation plan, will impose a large, albeit vague, paperwork and reporting requirement on air carriers, but will lead to no significant, documentable energy savings beyond those which result from existing economic incentives.

The amendments to part 199 were proposed to facilitate air carrier planning for energy conservation in the 1980's. A plan was required in order to focus the attention of a carrier's management on the need for energy conservation, and planning guidelines were added to facilitate consideration of the major planning issues. Appendix B contemplated submission of a detailed plan, but the sole purpose of requiring a plan was educational—i.e., to assist a carrier's management in developing a methodology for achieving energy conservation in its daily operations.

After consideration of all comments, it has become apparent that this purpose may well be achieved without imposition at this time of a formal planning requirement. Due to the escalation in price of aviation fuels, carriers are under strong economic incentive to plan for energy conservation. Executive Order 12044, Improving Government Regulations, dated March 23, 1978, directs agencies to consider alternative approaches to proposed regulations in order to choose the "least burdensome of the acceptable alternatives," and to consider the "direct and indirect effects" of such regulation. Many commenters view the proposed regulation as creating a burdensome reporting requirement, which would not increase

loan applicants to assist them in their energy planning and selection of aircraft. Information and guidance of this type will be available to eligible carriers beginning no later than October 1, 1980.

Accordingly, the amendments to part 199 proposed on May 7, 1980 (45 FR 30398), are withdrawn; and, in lieu thereof, FAA will implement an active test program of assistance in planning for energy conservation. The question of imposing a formal planning requirement will be reconsidered at a later date, after experience is gained with FAA's educational program. Further information with respect to the FAA program will be available to interested air carriers on an "on call" basis from the Chief of the Energy Division, AEE–200, 202/755–9717.

Accordingly, part 152 of the Federal Aviation Regulations (14 CFR part 152) is amended October 1, 1980, by adding a new subpart G and amending the authority citation for part 152.

*Authority:* Secs. 1–27, 84 Stat. 220–233 [49 U.S.C. 1711–1727]. Sec. 147(g), Regulations of the Office of the Secretary of Transportation; 35 FR 17044, Sec. 403(b), 92 Stat. 3318; E.O. 12184, unless otherwise noted.

NOTE: The complete final rule of "Energy Conservation by Recipients of Federal Financial Assistance" is contained in (45 FR 58022, August 29, 1980).

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## Amendment 152–13

## Procedures Implementing OMB Circular A–95

**Adopted: April 30, 1981** **Effective: July 8, 1981**

**(Published in 46 FR 30808, June 11, 1981)**

**SUMMARY:** These regulations set forth procedures designed to promote maximum coordination of the Airport Planning Grant Program and the Airport Development Aid Program with each other and with State, areawide, and local plans and programs. The Office of Management and Budget (OMB) requires Federal agencies to develop these procedures.

**FOR FURTHER INFORMATION CONTACT:** Howard Murphy, Plans Requirements Branch, APO–120, Planning Analysis Division, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–3220.

**SUPPLEMENTARY INFORMATION:** This amendment adopts final regulations implementing OMB Circular A–95, Revised, entitled "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects" (A–95), which was published in the *Federal Register* on January 13, 1976, 41 FR 2052.

The Airport Development Aid Program and the Planning Grant Program (Catalogue of Federal Domestic Assistance Program numbers 20.102 and 20.103) are the only Federally assisted programs administered by the FAA to which A–95 applies. For this reason, the agency's final regulations implementing A–95 are being published as a new appendix E to part 152, Airport Aid Program.

FAA interim procedures implementing A–95 were published in a notice of FAA policy, in the *Federal Register* on November 17, 1977 (42 FR 59477). On the same date, the FAA published Special Federal Aviation Regulation No. 35 (42 FR 59476) which required each applicant for Federal assistance under the Airport Development Aid Program and the Planning Grant Program to comply with the applicable procedures in the notice of policy. Since this requirement is being added to part 152 by this amendment, Special Federal Aviation Regulation No. 35 is being revoked.

exceptions listed in paragraph 23, appendix 6, FAA Order 1050.1C, *Policies and Procedures for Considering Environmental Impacts,* and appendix 1, FAA Order 1200.21A, *Evaluation, Review, and Coordination of FAA Direct Development Programs and Projects.*

Material that is strictly informational or advisory has not been placed in appendix E. This includes material in §§ 10, 11, and 12 of the interim procedures which deal with clearinghouse functions, the consultation and review process, and the subject matter of comments and recommendations.

Section 2(a)(4) of the interim procedures, which recommends that sponsors use the notification forms and instructions developed by many clearinghouses, is not mandatory, and, therefore, has not been included in the requirements of appendix E. However, sponsors and planning agencies are urged to use these forms, when they are available, in order to expedite clearinghouse review.

In response to an invitation in the Notice of Policy, the FAA received five public comments on the interim procedures. Where appropriate, those comments have been considered in the development of the final procedures.

**Adoption of the Amendment**

Accordingly, Special Federal Aviation Regulations No. 35 (42 FR 59477; November 17, 1979) appearing in 14 CFR part 152 is revoked and removed, effective July 8, 1981, and part 152 of the Federal Aviation Regulations (14 CFR part 152) is amended effective July 8, 1981.

(Secs. 303, 307, 308, 312, and 313, Federal Aviation Act of 1958 (49 U.S.C. 1344, 1348, 1349, 1353, and 1354); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*); Sec. 1.47(f)(1), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(1)); OMB Circular A–95, Revised (41 FR 2052; January 13, 1976).)

NOTE: The final procedures implemented by this amendment are substantially the same as the interim procedures already being complied with by grant applicants and will not impose any major cost increase or any adverse economic effect. For this reason the FAA has determined that this document involves a proposed regulation which is not a major rule under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator as defined by Section 1005 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1485). As such, it is subject to review only by the Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia.

Source: Docket No. 19430 (45 FR 34784, 5/22/80) effective 5/22/80, for each subpart unless otherwise noted.

### § 152.1 Applicability.

This part applies to airport planning and development under the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*).

### § 152.3 Definitions.

The following are definitions of terms used throughout this part:

*AADA* means the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*).

*Air carrier airport* means—

(1) An existing public airport regularly served, or a new public airport that the Administrator determines will be regularly served, by an air carrier, other than a charter air carrier, certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958; and

(2) A commuter service airport.

*Airport* means—

(1) Any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft;

(2) Any appurtenant areas that are used, or intended for use, for airport buildings, other airport facilities, or rights-of-way; and

(3) All airport buildings and facilities located on the areas specified in this definition.

*Airport development* means—

(1) Any work involved in constructing, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and lighting or airport hazards, and including navigation aids used by aircraft landing at, or taking off from, a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 612 of the Federal Aviation Act of 1958, and security equipment required of the sponsor by the FAA by rule or regulation for the safety and security of persons or property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport.

(2) Any acquisition of land or of any interest therein, or of any easement through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards; and

(3) Any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport.

*Airport hazard* means any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near a public airport, that—

(1) Obstructs the airspace required for the flight of aircraft landing or taking off at the airport; or

(2) Is otherwise hazardous to aircraft landing or taking off at the airport.

*Airport layout plan* means a plan for the layout of an airport, showing existing and proposed airport facilities.

*Airport master planning* means the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport.

*Airport system planning* means the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area to establish a viable and balanced system of public airports.

*Audit* means the examination and verification of part or all of the documentary evidence supporting an item of project cost in accordance with Attach-

by the Civil Aeronautics Board from section 401(a) of the Federal Aviation Act of 1958; and

(3) At which not less than 2,500 passengers were enplaned during the preceding calendar year by air carriers operating under an exemption from section 401(a).

*Force account* means—

(1) The sponsor's or planning agency's own labor force; or

(2) The labor force of another public agency acting as an agent of the sponsor or planning agency.

*General aviation airport* means a public airport other than an air carrier airport.

*Landing area* means an area used, or intended to be used, for the landing, takeoff, or surface maneuvering of aircraft.

*NASP* means the National Airport System Plan.

*National Airport System Plan* means the plan for the development of public airports in the United States formulated by the Administrator under section 12 of the AADA.

*Nonrevenue producing public-use areas* means areas that are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport.

*Passengers enplaned* means—

(1) United States domestic, territorial, and international revenue passenger enplanements in scheduled and nonscheduled service of air carriers; and

(2) Revenue passenger enplanements by foreign air carriers in intrastate and interstate commerce.

*Planning agency* means a planning agency designated by the Administrator that is authorized by the laws of a State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, or by the laws of a political subdivision of any of those entities, to engage in areawide planning for the areas in which assistance under this part is to be used.

tion of plans and specifications;

(2) The acquisition of land or interests in land, or easement through or other interests in airspace; and

(3) Any necessary administrative or other incidental costs incurred by the sponsor specifically in connection with the accomplishment of a project for airport development, that would not have been incurred otherwise.

*Public agency* means—

(1) A state, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Government of the Northern Marianas, Guam, or any agency of those entities;

(2) A municipality or other political subdivision;

(3) A tax-supported organization; or

(4) An Indian tribe or pueblo.

*Public airport* means any airport that—

(1) Is used, or intended to be used, for public purposes;

(2) Is under the control of a public agency; and

(3) Has a property interest satisfactory to the Administrator in the landing area.

*Reliever airport* means a general aviation airport designated by the Administrator as having the primary function of relieving congestion at an air carrier airport by diverting from that airport general aviation traffic.

*Runway clear zone* means an area at ground level underlying a portion of the approach surface specified in the standards incorporated into this part by § 152.11.

*Satisfactory property interest* means—

(1) Title free and clear of any reversionary interest, lien, easement, lease, or other encumbrance that, in the opinion of the Administrator would—

(i) Create an undue risk that it might deprive the sponsor of possession or control;

(ii) Interfere with the use of the airport for public airport purposes; or

(3) In the case of an off-airport area, title or an agreement, easement, leasehold or other right or property interest that, in the Administrator's opinion, provides reasonable assurance that the sponsor will not be deprived of its right to use the land for the intended purpose during the period necessary to meet the requirements of the grant agreement; or

(4) In the case of a runway clear zone, an easement or a covenant running with the land, giving the airport operator or owner enough control to rid the clear zone of all airport hazards and prevent the creation of future airport hazards.

*Sponsor* means any public agency that, whether individually or jointly with one or more other public agencies, submits to the Administrator, in accordance with this part, an application for financial assistance.

*Stage development* means airport development accomplished under stage construction over not less than two years where the sponsor assures that any development not funded under the initial grant agreement will be completed with or without Federal funds.

*State* means a State of the United States or the District of Columbia.

*Terminal development* means airport development in the nonrevenue producing public-use areas which are associated with the terminal and which are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport, including, but not limited to, vehicles for the movement of passengers between terminal facilities and aircraft.

*Unified Planning Work Program* means a single document prepared by a local areawide planning agency that identifies all transportation and related planning activities that will be undertaken within the metropolitan area during a one-year or two-year period.

### §152.5 Exemptions.

(a) Except as provided in paragraph (b) of this section, any interested person may petition the

(1) Unless otherwise authorized by the Regional Director concerned, be submitted not less than 60 days before the proposed effective date of the exemption;

(2) Be submitted in duplicate to the FAA Regional Office or Airports District Office having jurisdiction over the area in which the airport is located;

(3) Contain the text or substance of the rule from which the exemption is sought;

(4) Explain the nature and extent of the relief sought; and

(5) Contain any information, views, or arguments in support of the exemption.

(d) The Regional Director concerned either grants or denies the exemption and notifies the petitioner of the decision. The FAA publishes a summary of the grant or denial of petition for exemption in the *Federal Register.*

The summary includes—

(1) The docket number of the petition;

(2) The name of the petitioner;

(3) A citation of each rule from which relief is requested;

(4) A brief description of the general nature of the relief requested; and

(5) The disposition of the petition.

(e) Official FAA records, including grants and denials of exemptions, relating to petitions for exemption are maintained in current docket form in the Office of the Regional Counsel for the region concerned.

(f) Any interested person may—

(1) Examine any docketed material at the Office of the Regional Counsel, at any time after the docket is established, except material that is ordered withheld from the public under section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504); and

(2) Obtain a photostatic or similar copy of docketed material upon paying the same fee as that prescribed in 49 CFR part 7.

ing the showing required.

(b) The Administrator exercises discretion in determining whether to accept a certification.

(c) Acceptance by the Administrator of a certification from a sponsor or planning agency may be rescinded by the Administrator at any time if, in the Administrator's opinion, it is necessary to do so.

(d) If the Administrator determines that it is necessary, the sponsor or planning agency, on request, shall show compliance with any requirement for which a certification was accepted.

### § 152.9 Forms.

Any form needed to comply with this part may be obtained at any FAA Regional Office or Airports District Office.

### § 152.11 Incorporation by reference.

(a) *Mandatory standards.* The advisory circulars listed in appendix B to this part are incorporated into this part by reference. The Director, Office of Airport Standards, determines the scope and content of the technical standards to be included in each advisory circular in appendix B, and may add

durability, and workmanship. The determination and modification may be made by the Director, Office of Airport Standards, or the appropriate Regional Director, in instances where the authority has not been specifically reserved by the Director, Office of Airport Standards.

(c) *State standards.* Standards established by a state for airport development at general aviation airports in the state may be the standards applicable to those airports when they have been approved by the Director, Office of Airport Standards, or the appropriate Regional Director, in instances where approval authority has not been specifically reserved by the Director, Office of Airport Standards.

(d) *Availability of advisory circulars.* The advisory circulars listed in appendix B may be inspected and copied at any FAA Regional Office or Airports District Office. Copies of the circulars that are available free of charge may be obtained from any of those offices or from the FAA Distribution Unit, M–443.1, Washington, DC 20590. Copies of the circulars that are for sale may be bought from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

This subpart contains requirements and application procedures applicable to airport development and planning projects.

### § 152.103 Sponsors: Airport development.

(a) To be eligible to apply for a project for airport development with respect to a particular airport the following requirements must be met:

(1) Each sponsor must be a public agency authorized by law to submit the project application;

(2) If a sponsor is the holder of an airport operating certificate issued for the airport under part 139 of this chapter, it must be in compliance with the requirements of part 139.

(3) When any of the the following agreements is applicable to an airport which the sponsor owns or controls, the sponsor must have complied with the agreement, or show to the satisfaction of the Administrator that it will comply or, for reasons beyond its control, cannot comply with the agreement:

(i) Each grant agreement made with it under the Federal Airport Act (49 U.S.C. 1101 *et seq.*), or the AADA.

(ii) Each convenant in a conveyance to it under section 16 of the Federal Airport Act or section 23 of the AADA.

(iii) Each convenant in a conveyance to it of surplus airport property under section 13(a) of the Surplus Property Act (50 U.S.C. App 1622(g)) or under Regulation 16 of the War Assets Administration.

(4) The sponsor, in the case of a single sponsor, or one or more of the cosponsors must have, or be able to obtain—

(i) Funds to pay all estimated costs of the project that are not to be born by the United States; and

(ii) Satisfactory property interests in the lands to be developed or used as part of, or in connection with, the airport as it will be after the project is completed.

the public agency that is to own and operate the airport, for the purpose of channeling grant funds in accordance with state or local law, without becoming a sponsor.

### § 152.105 Sponsors and planning agencies: Airport planning.

(a) To be eligible to apply for a project for airport planning—

(1) If the project is for airport master planning—

(i) Each sponsor must be a public agency and meet the requirements of § 152.103(a)(3); and

(ii) The sponsor, in the case of a single sponsor, or one or more cosponsors must be legally able to implement the planning, within the existing or proposed airport boundaries, that results from the project study.

(2) If the project is for airport system planning, each sponsor must be a planning agency.

(b) Another public agency or planning agency may act as agent of another public agency or planning agency, for the purpose of channeling grant funds in accordance with state or local law, without becoming a sponsor.

### § 152.107 Project eligibility: Airport development.

(a) Except in the case of approved stage development, each project for airport development must provide for—

(1) Development of an airport or unit of an airport that is safe, useful, and usable; or,

(2) An additional facility that increases the safety, usefulness, and usability of an airport.

(b) Unless otherwise authorized by the Administrator, a project for airport development must involve more than $25,000 in United States funds.

(c) The development included in a project for airport development must—

(1) In the opinion of the Administrator, be "airport development" as defined in § 152.3;

(1) Own, acquire, or agree to acquire control over, or a property interest in, runway clear zones that the Administrator considers adequate; and

(2) Provide for approach and runway lighting systems satisfactory to the Administrator.

### § 152.109 Project eligibility: Airport planning.

(a) *Airport master planning.* A proposed project for airport master planning is not approved unless—

(1) The location of the existing or proposed airport is included in the current NASP;

(2) In the opinion of the Administrator, the proposed planning would promote the effective location of public airports and the development of an adequate NASP;

(3) The project is airport master planning as defined in § 152.3;

(4) If the project has been determined to have areawide significance by an appropriate areawide agency, it has been incorporated into a unified planning work program; and

(5) In the case of a proposed project for airport master planning in a large or medium air traffic hub, in the opinion of the Administrator—

(i) There is an appropriate system plan identifying the need for the airport;

(ii) The absence of a system plan is due to the failure of the responsible planning agency to proceed with its preparation; or

(iii) An existing system plan is not acceptable.

(b) *Airport system planning.* A proposed project for airport system planning is not approved unless—

(1) In the opinion of the Administrator, the project promotes the effective location of public airports;

(2) In the opinion of the Administrator, the project promotes the development of an adequate NASP;

(3) The project is airport system planning as defined in § 152.3; and

(4) When the project encompasses a metropolitan area that includes a large or medium hub prescribed by the Administrator, through the FAA Airports District Office or Airports Field Office having jurisdiction over the area where the sponsor is located or, where there is no such office, the Regional Office having that jurisdiction.

(b) *Preapplication for Federal assistance.* A preapplication for Federal assistance must be submitted unless—

(1) The Federal fund request is for $100,000 or less; or,

(2) The project does not include construction, land acquisition, or land improvement.

(c) Unless otherwise authorized by the Administrator, the preapplication required by paragraph (b) of this section must be accompanied by the following:

(1) A list of the items of airport development requested for programming, together with an itemized estimated cost of the work involved.

(2) A sketch or sketches of the airport layout indicating the location for each item of work proposed, using the same item numbers used in the list required by paragraph (c)(1) of this section.

(3) If the proposed project involves the displacement of persons or the acquisition of real property, the assurances required by §§ 25.57 and 25.59, as applicable, of the Regulations of the Office of the Secretary of Transportation (49 CFR 25.57 and 25.59), whether or not reimbursement is being requested for the costs of displacement or real property acquisition.

(4) Any comments or statements required by appendix E, Procedures Implementing Office of Management and Budget Circular A–95, to this part, with a showing that they have been considered by the sponsor.

(5) If the proposed development involves the construction of eligible airport buildings or the acquisition of eligible fixed equipment to be contained in those buildings, a statement whether the proposed development will be in an area of the community that has been identified by the Department of Housing and Urban Development as an area of special flood hazard as defined

Considering Environmental Impacts" (45 FR 2244; Jan. 10, 1980), and FAA Order 5050.4, "Airport Environmental Handbook" (45 FR 56624; Aug. 24, 1980), if an assessment is required by Order 5050.4. Copies of these orders may be examined in the Rules Docket, Office of the Chief Counsel, FAA, Washington, DC, and may be obtained on request at any FAA regional office headquarters or any airports district office.

(8) A showing that the sponsor has complied with the public hearing requirements in § 152.117.

(9) In the case of a proposed new airport serving any area that does not include a metropolitan area, a showing that each community in which the proposed airport is to be located has approved the proposed airport site through the body having general legislative jurisdiction over it.

(10) In the case of a proposed project at an air carrier airport, a statement that the sponsor, in making the decision to undertake the project, has consulted with air carriers using the airport.

(11) In the case of a proposed project at a general aviation airport, a statement that the sponsor, in making the decision to undertake the project, has consulted with fixed-base operators using the airport.

(12) In the case of terminal development, a certification that the airport has, or will have, all safety and security equipment required for certification of the airport under part 139 and has provided, or will provide, for access to the passenger enplaning and deplaning area to passengers enplaning or deplaning from aircraft other than air carrier aircraft.

(d) *Allocation of funds.* If the proposed project for airport development is selected by the Administrator for inclusion in a program, a tentative allocation of funds is made for the project and the sponsor is notified of the allocation. The tentative allocation may be withdrawn if the sponsor does not submit a project application in accordance with paragraph (f) of this section.

(e) *Application for Federal assistance.* As soon as practicable after receiving notice of a tentative paragraph (c) of this section.

(2) A property map of the airport showing—

(i) The property interests of each sponsor in all the lands to be developed or used as part of, or in connection with, the airport as it will be when the project is completed; and

(ii) All property interests acquired or to be acquired, for which U.S. aid is requested under the project.

(3) With respect to all lands to be developed or used as a part of, or in connection with, the airport (as it will be when the project is completed) in which a satisfactory property interest is not held by a sponsor, a covenant by the sponsor that it will obtain a satisfactory property interest before construction is begun or within a reasonable time if not needed for construction.

(4) If the proposed project involves the displacement of persons, the relocation plan required by § 25.55 of the Regulations of the Office of the Secretary of Transportation.

(5) When the project involves an airport location, a runway location, or a major runway extension, a written certification from the Governor of the state in which the project may be located (or a delegatee), providing reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

(6) A statement whether any building, installation, structure, location, or site of operations to be utilized in the performance of the grant or any contract made pursuant to the grant appears on the list of violating facilities distributed by the Environmental Protection Agency under the provisions of the Clean Air Act and Federal Water Pollution Control Act (40 CFR part 15).

(7) The assurances on Civil Rights required by § 21.7 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21.7) and § 152.405.

(8) Plans and specifications for the proposed development in accordance with the design and construction standards listed in appendix B to this part.

project and the operation and maintenance of the airport;

(ii) The obligations each will assume to the United States; and

(iii) The name of the sponsor or sponsors who will accept, receipt for, and disburse grant payments.

(g) *Additional documentation.* The Administrator may request additional documentation as needed to support specific items of development or to comply with other Federal and local requirements as they pertain to the requested development.

(Amdt. 152–11, Eff. 8/25/80); (Amdt. 152–13, Eff. 7/8/81)

### § 152.113 Application requirements: Airport planning.

(a) *Application for Federal assistance.* An eligible sponsor or planning agency that desires to obtain Federal aid for eligible airport master planning or airport system planning must submit an application for Federal assistance, on a form and in a manner prescribed by the Administrator, to the appropriate FAA Airports District Office or Airports Field Office having jurisdiction over the area where the sponsor or planning agency is located or, where there is no such office, the Regional Office having that jurisdiction.

(b) Unless otherwise authorized by the Administrator, the application required by paragraph (a) of this section must be accompanied by the following:

(1) Any comments or statements required by appendix E, Procedures Implementing Office of Management and Budget Circular A–95, to this part.

(2) Budget (project costs) information subdivided into the following functions, as appropriate, and the basis for computation of these costs:

(i) Third party contracts.

(ii) Sponsor force account costs.

(iii) Administrative costs.

(3) A program narrative describing the proposed planning project including—

(C) A proposed schedule of work accomplishment; and

(iv) The geographic location of the airport or the boundaries of the planning area.

(4) If the sponsor proposes to accomplish the project with its own forces or those of another public or planning agency—

(i) An assurance that adequate, competent personnel are available to satisfactorily accomplish the proposed planning project, and

(ii) A description of the qualifications of the key personnel.

(5) If cosponsors are not willing to assume, jointly, and severally, the obligations imposed on them by this part and the grant agreement, a statement satisfactory to the Administrator indicating—

(i) The responsibilities of each sponsor with respect to the accomplishment of the proposed project;

(ii) The obligations each will assume to the United States; and

(iii) The name of the sponsor or sponsors who will accept, receipt for, and disburse grant payments.

(6) The assurances on Civil Rights required by § 21.7 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21.7).

(7) The applicable assurances required by appendix D of this part.

(c) *Additional documentation.* The Administrator may request additional documentation as needed to support a master plan or system plan, or to comply with other Federal and local requirements as they pertain to the requested plan.

(Amdt. 152–13, Eff. 7/8/81)

### § 152.115 Grant agreement: Offer, acceptance, and amendment.

(a) *Offer.* Upon approving a project for airport development, airport master planning, or airport system planning, the Administrator issues a written offer that sets forth the terms, limitations, and requirements of the proposed agreement.

grant agreement for an airport development project may be increased by an amendment if—

(1) Except as otherwise provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the maximum obligation of the United States is not increased by more than 10 percent;

(2) Funds are available for the increase;

(3) The sponsor shows that the increase is justified; and

(4) The change does not prejudice the interest of the United States.

(d) *Reduction of U.S. Share: Airport development grants.* When project work for which costs have been incurred is deleted from a grant agreement, the Administrator reduces the maximum obligation of the United States proportionately, based on the cost or value of the deleted work as shown on the project application.

(e) *Amendment: Airport planning.* A grant agreement for airport planning may be changed if—

(1) The change does not increase the maximum obligation of the United States under the grant agreement; and

(2) The change does not prejudice the interest of the United States.

### § 152.117 Public hearings.

(a) Before submitting a preapplication for Federal assistance for an airport development project involving the location of an airport, an airport runway, or a runway extension, the sponsor must give notice of opportunity for a public hearing, in accordance with paragraph (b) of this section, for the purpose of—

(1) Considering the economic, social, and environmental effects of the location of the airport, the airport runway, or the runway extension; and

(2) Determining the consistency of the location with the goals and objectives of any urban planning that has been carried out by the community.

(b) The notice of opportunity for public hearing must—

project; and

(4) State that a copy is available of the sponsor's environmental assessment, if one is required by appendix 6 of FAA Order 1050.1C, "Policies and Procedures for Considering Environmental Impacts" (45 FR 2244; Jan. 10, 1980), and FAA Order 5050.4, "Airport Environmental Handbook" (45 FR 56624; Aug. 25, 1980), and will remain available, at the sponsor's place of business for examination by the public for a minimum of 30 days, beginning with the date of the notice, before any hearing held under the notice.

(c) A public hearing must be provided if requested. If a public hearing is to be held, the sponsor must publish a notice of that fact, in the same newspaper in which the notice of opportunity for a hearing was published.

(d) The notice required by paragraph (c) of this section must—

(1) Be published not less than 15 days before the date set for the hearing;

(2) Specify the date, time, and place of the hearings;

(3) Contain a concise description of the proposed project; and

(4) Indicate where and at what time more detailed information may be obtained.

(e) If a public hearing is held, the sponsor must—

(1) Provide the Administrator a summary of the issues raised, the alternatives considered, the conclusion reached, and the reasons for that conclusion; and

(2) If requested by the Administrator before the hearing, prepare a verbatim transcript of the hearing for submission to the Administrator.

(f) If a hearing is not held the sponsor must submit with its preapplication a certification that notice of opportunity for a hearing has been pro vided in accordance with this section and that no request for a public hearing has been received.

(Amdt. 152–11, Eff. 8/25/80)

This subpart contains the requirements for funding projects for airport development, airport master planning, and airport system planning.

### § 152.203 Allowable project costs.

(a) *Airport development.* To be an allowable project cost, for the purposes of computing the amount of an airport development grant, an item that is paid or incurred must, in the opinion of the Administrator—

(1) Have been necessary to accomplish airport development in conformity with—

(i) The approved plans and specifications for an approved project; and

(ii) The terms of the grant agreement for the project;

(2) Be reasonable in amount (subject to partial disallowance to the extent the Administrator determines it is unreasonable);

(3) Have been incurred after the date the grant agreement was executed, except that project formulation costs may be allowed even though they were incurred before that date;

(4) Be supported by satisfactory evidence;

(5) Have not been included in an airport planning grant; and

(6) Be a cost determined in accordance with the cost principles for State and local governments in Federal Management Circular 74–4 (39 FR 27133; 43 FR 50977).

(b) *Airport Planning.* To be an allowable project cost, for the purposes of computing the amount of an airport planning grant, an item that is paid or incurred must, in the opinion of the Administrator—

(1) Have been necessary to accomplish airport planning in comformity with an approved project and the terms of the grant agreement for the project;

(2) Be reasonable in amount;

(3) Have been incurred after the date the grant agreement was entered into, except for substantiated and reasonable costs incurred in designing the study effort;

(5) Be figured in accordance with Federal Management Circular 74–4 (39 FR 27133; 43 FR 50977).

### § 152.205 United States share of project costs.

(a) *Airport development.* Except as provided in paragraphs (b) and (c) of this section, the following is the United States share of the allowable cost of an airport development project approved for the specified year:

(1) 90 percent in the case of grants made from funds for fiscal years 1976, 1977, and 1978, and grants from funds for fiscal year 1980 made after February 17, 1980, for—

(i) Each air carrier airport, other than a commuter service airport, which enplanes less than one quarter of one percent of the total annual passengers enplaned as determined for purposes of making the latest annual apportionment under section 15(a)(3) of the AADA;

(ii) Each commuter service airport; and

(iii) Each general aviation or reliever airport.

(2) 80 percent in the case of grants made from funds for fiscal year 1979 and grants from funds for fiscal year 1980 made before February 18, 1980, for the airports specified in paragraph (a)(1) of this section.

(3) 75 percent in the case of grants made from funds for fiscal years 1976 through 1980 for airports other than those specified in paragraph (a)(1) of this section.

(b) In a State in which the unappropriated and unreserved public lands and nontaxable Indian lands, both individual and tribal, are more than five percent of the total land in that State, the United States' share under paragraph (a) of this section—

(1) Except as provided in paragraph (b)(2) of this section, shall be increased by the smaller of—

(i) 25 percent; or

(ii) A percentage (rounded to the nearest one-tenth of a percent) equal to one-half of

(d) *Airport planning.* The United States share of the allowable project costs of an airport planning project shall be—

(1) In the case of an airport master plan, that percent for which a project for airport development at that airport would be eligible;

(2) In the case of an airport system plan, 75 percent.

### § 152.207 Proceeds from disposition of land.

Unless otherwise authorized by the Administrator, when a release has been granted authorizing the sponsor to dispose of land acquired with assistance under part 151 of this chapter or this part, or through conveyances under the Surplus Property Act, the proceeds realized from the disposal may not be used as matching funds for any airport development project or airport planning grant, but may be used for any other airport purpose.

### § 152.209 Grant payments: General.

(a) An application for a grant payment is made on a form and in a manner prescribed by the Administrator, and must be accompanied by any supporting information, that the FAA needs to determine the allowability of any costs for which payment is requested.

(b) *Methods of payment.* Grant payments to sponsors and planning agencies will be made by—

(1) Letter of credit;

(2) Advance by Treasury check; or

(3) Reimbursement by Treasury checks.

(c) *Letter of credit funding.* Letter of credit funding may not be used unless—

(1) There is or will be a continuing relationship between a sponsor or planning agency and the FAA for at least a 12-month period and the total amount of advances to be received within that period is $120,000 or more;

(2) The sponsor or planning agency has established or demonstrated to the FAA the willingness and ability to establish procedures that will minimize the time elapsing between the transfer

(1) The sponsor or planning agency meets the requirements of paragraphs (c) (2) and (3) of this section;

(2) The timing and amount of cash advances are as close as administratively feasible to actual disbursements by the sponsor or planning agency; and

(3) Except as provided in paragraph (e) of this section, in the case of an airport development project, advance payments do not exceed the estimated project costs of the airport development expected to be accomplished within 30 days after the date of the sponsor's application for the advance payment.

(e) No advance payment for airport development projects may be made in an amount that would bring the aggregate amount of all partial payments to more than the lower of the following:

(i) 90 percent of the estimated United States' share of the total estimated cost of all airport development included in the project, but not including contingency items; or

(ii) 90 percent of the maximum obligation of the United States as stated in the grant agreement.

(f) *Reimbursement by Treasury check.* Reimbursement by Treasury check will be made if the sponsor or planning agency does not meet the requirements of paragraphs (c) (2) and (3) of this section.

(g) *Withholding of payments.* Payment to the sponsor or planning agency may be withheld at any time during the grant period under the following circumstances:

(1) The sponsor or planning agency has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements.

(2) The sponsor or planning agency is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States.

for an airport development project, further grant payments to the sponsor are suspended until—

(1) The violations are corrected;

(2) The Administrator determines the allowability of the project costs to which the violations relate; or

(3) If the violations consist of underpayments to labor, the sponsor furnishes satisfactory assurances to the FAA that restitution has been or will be made to the affected employees.

(i) *Excess payments.* Upon determination of the allowability of all project costs of a project, if it is found that the total of grant payments to the sponsor or planning agency was more than the total United States share of the allowable costs of the project, the sponsor or planning agency shall promptly return the excess to FAA.

### § 152.211 Grant payments: Land acquisition.

If an approved project for airport development includes land acquisition as an item for which payment is requested, the sponsor may apply to the FAA for payment of the United States share of the allowable project costs of the acquisition, after—

(a) The Administrator determines that the sponsor has acquired satisfactory title to the land; or

(b) In the case of a request for advance payment under § 152.209(d), the Administrator is assured that a satisfactory title will be acquired.

### § 152.213 Grant closeout requirements.

(a) *Program income.* Sponsors or planning agencies that are units of local government shall return all interest earned on advances of grant-in-aid funds to the Federal Government in accordance with a decision of the Comptroller General (42 Comp. which the Federal share of costs will be based.

(b) *Financial reports.* The sponsor or planning agency shall furnish, within 90 days after completion of all items in a grant, all reports, including financial performance reports, required as a condition of the grant.

(c) *Project completion.* When the project for airport development or planning is completed in accordance with the grant agreement, the sponsor or planning agency may apply for payment for all incurred costs, as follows:

(1) *Airport development.* When allowability of costs can be determined under § 152.203, payment may be made to the sponsor if—

(i) A final inspection of all work at the airport site has been made jointly by the appropriate FAA office and representatives of the sponsor and the contractor, unless that office agrees to a different procedure for final inspection; and

(ii) The sponsor has furnished final "as constructed" plans, unless otherwise agreed to by the Administrator.

(2) *Airport planning.* When the final planning report has been received and accepted by the FAA.

(d) *Property accounting reports: Airport development projects.* The sponsor of an airport development project shall account for any property acquired with grant funds or received from the United States, in accordance with the provisions of Attachment N of Office of Management and Budget Circular A–102 (42 FR 45828).

(e) *Final determination of U.S. share.* Based upon an audit or other information considered sufficient in lieu of an audit, the Administrator determines the total amount of the allowable project costs and makes settlement for any adjustments to the Federal share of costs.

This subpart contains accounting and reporting requirements applicable to—

(a) Each sponsor of a project for airport development;

(b) Each sponsor of a project for airport master planning; and

(c) Each planning agency conducting a project for airport system planning.

### § 152.303 Financial management system.

Each sponsor or planning agency shall establish and maintain a financial management system that meets the standards of Attachment G of Office of Management and Budget Circular A–102 (42 FR 45828).

### § 152.305 Accounting records.

(a) *Airport development.* Each sponsor of a project for airport development shall establish and maintain, for each individual project, an accounting record satisfactory to the Administrator which segregates cost information into the cost classifications set forth in Standard Form 271 (42 FR 45841).

(b) *Airport planning.* Each sponsor of a project for airport master planning and each planning agency conducting a project for airport system planning shall establish and maintain, for each planning project, an adequate accounting record that segregates and groups direct and indirect cost information in the following classifications:

(1) Third party contract costs.

(2) Force account costs.

(3) Administrative costs.

### § 152.307 Retention of records.

Each sponsor or planning agency shall retain, for a period of 3 years after the date of submission of the final expenditure report—

(a) Documentary evidence, such as invoices, cost estimates, and payrolls, supporting each item of project costs; and

rants, and receipts for cash payments.

### § 152.309 Availability of sponsor's records.

(a) The sponsor or planning agency shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the United States access to any of its books, documents, papers, and records that are pertinent to grants received under this part for the purposes of accounting and audit.

(b) The sponsor or planning agency shall allow appropriate FAA or DOT representatives to make progress audits at any time during the project, upon reasonable notice to the sponsor or planning agency.

(c) It audit findings have not been resolved, the applicable records shall be retained by the sponsor or planning agency until those findings have been resolved.

(d) Records for nonexpendable property that was acquired with Federal funds shall be retained for three years after final disposition of the property.

(e) Microfilm copies of original records may be substituted for original records with the approval of the FAA.

(f) If the FAA determines that certain records have long-term retention value, the FAA may require transfer of custody of those records to the FAA.

### § 152.311 Availability of contractor's records.

The sponsor or planning agency shall include in each contract of the cost reimbursable type a clause that allows any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the United States access to the contractor's records pertinent to the contract for the purposes of accounting and audit.

### § 152.313 Property management standards.

(a) The sponsor shall establish and maintain property management standards in accordance with Attachment N of Office of Management and Budget Circular A–102 (42 FR 45828) for the utilization

(a) Except as provided in paragraph (b) of this section each sponsor or planning agency shall submit all financial reports on an accrual basis.

(b) If records are not maintained on an accrual basis by a sponsor or planning agency, reports may be based on an analysis of records or best estimates.

### § 152.317 Report of Federal cash transactions.

When funds are advanced to a sponsor or planning agency by Treasury check, the sponsor or planning agency shall submit the report form prescribed by the Administrator within 15 working days following the end of the quarter in which check was received.

### § 152.319 Monitoring and reporting of program performance.

(a) The sponsor or planning agency shall monitor performance under the project to ensure that—

(1) Time schedules are being met;

(2) Work units projected by time periods are being accomplished; and,

(3) Other performance goals are being achieved.

(b) Reviews shall be made for—

(1) Each item of development or work element included in the project; and

(2) All other work to be performed as a condition of the grant agreement.

(c) *Airport development.* Unless otherwise requested by the Administrator, the sponsor of a project for airport development shall submit a performance report, on an annual basis, that must include—

(1) A comparison of actual accomplishments to the goals established for the period, made, if applicable, on a quantitative basis related to cost data for computation of unit costs;

(2) The reasons for slippage in each case where an established goal was not met; and

(3) Other pertinent information including, when appropriate, an analysis and explanation of each cost overrun and high unit cost.

(2) Reasons for slippage in each case where an established goal was not met; and

(3) Other pertinent information including, when appropriate, an analysis and explanation of each cost overrun and high work element cost.

### § 152.321 Notice of delay or acceleration.

(a) The sponsor or planning agency shall promptly notify the FAA of each condition or event that may delay or accelerate accomplishment of the project.

(b) In the event that delay is anticipated, the notice required by paragraph (a) of this section must include—

(1) A statement of actions taken or contemplated; and

(2) Any Federal assistance needed.

### § 152.323 Budget revision: Airport development.

(a) If any performance review conducted by the sponsor discloses a need for change in the budget estimates, the sponsor shall submit a request for budget revision on a form prescribed by the Administrator.

(b) A request for prior approval for budget revision shall be made promptly by the sponsor whenever—

(1) The revision results from changes in the scope or objective of the project; or

(2) The revision increases the budgeted amounts of Federal funds needed to complete the project.

(c) The sponsor shall promptly notify the FAA whenever the amount of the grant is expected to exceed the needs of the sponsor by more than $5,000, or 5 percent of the grant amount, whichever is greater.

### § 152.325 Financial status report: Airport planning.

Each sponsor of a project for airport master planning and each planning agency conducting a project for airport system planning shall submit a financial

### § 152.401 Applicability.

(a) This subpart is applicable to all grantees and other covered organizations under this part, and implements the requirements of section 30 of the Airport and Airway Development Act of 1970, which provides:

The Secretary shall take affirmative action to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds received from any grant made under this title. The Secretary shall promulgate such rules as he deems necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under Title VI of the Civil Rights Act of 1964. The provisions of this section shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964.

(b) Each grantee, covered organization, or covered suborganization under this part shall negotiate reformation of any contract, subcontract, lease, sublease, or other agreement to include any appropriate provision necessary to effect compliance with this subpart by July 17, 1980.

### § 152.403 Definitions.

As used in this subpart—

*AADA* means the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 *et seq.*).

*Affirmative action plan* means a set of specific and result-oriented procedures to which a sponsor, planning agency, state, or the aviation related activity on an airport commits itself to achieve equal employment opportunity.

*Airport development* means—(1) Any work involved in constructing, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 612 of the Federal Aviation Act of 1958, and security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport;

(2) Any acquisition of land or of any interest therein, or of any easement through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards; and

(3) Any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport.

*Aviation related activity* means a commercial enterprise—(1) Which is operated on the airport pursuant to an agreement with the grantee or airport operator or to a derivative subagreement;

(2) Which employs persons on the airport; and

(3) Which—(i) Is related primarily to the aeronautical activities on the airport;

(ii) Provides goods or services to the public which is attracted to the airport by aeronautical activities;

(iii) Provides services or supplies to other aeronautical related or public service airport businesses or to the airport; or

(iv) Performs construction work on the airport.

*Aviation workforce* includes, with respect to grantees, each person employed by the grantee on an airport or, for an aviation purpose, off the airport.

*Covered organization* means a grantee, a subgrantee, or an aviation related activity.

not of Hispanic origin. A person having origins in any of the black racial groups of Africa;

(2) Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(3) Asian or Pacific Islander: A person having origins in any or the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including, but not limited to China, Japan, Korea, the Philippine Islands, and Samoa; or

(4) American Indian or Alaskan Native: A person having origins in any of the original peoples of North America who maintains cultural identification through tribal affiliation or community recognition.

*Planning agency* means any planning agency designated by the Secretary which is authorized by the laws of the State or States (including the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam) or political subdivisions concerned to engage in areawide planning for the area in which assistance under this part is to be used;

*Secretary* means the Secretary of Transportation or an authorized representative of the Secretary within the Department of Transportation;

*SMSA* means Standard Metropolitan Statistical Area.

*Sponsor* means any public agency that, either individually or jointly with one or more other public agencies, submits to the Administrator, in accordance with this part, an application for financial assistance, or that conducts a project for airport development or airport master planning, funded under this part;

*Underutilization* means having fewer minorities or women in a particular job group than would reasonable be expected from their availability in—

(1) The SMSA; or

(2) In the absence of a defined SMSA, in the counties contiguous to the employer's location, or the location where the work is to be

by 14 CFR part 152, subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment, contracting, or leasing activities covered in 14 CFR part 152, subpart E. The grantee assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The grantee assures that it will require that its covered organizations provide assurances to the grantee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR part 152, subpart E, to the same effect.

(b) *Assurance.* The grantee agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR part 152, subpart E, as part of the affirmative action program, and by any Federal, State, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. The grantee agrees that State or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR part 152, subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. The grantee agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR part 152, subpart E.

### § 152.407 Affirmative action plan: General.

(a) Except as provided in paragraph (b) of this section, each of the following shall have an affirmative action plan that meets the requirements of § 152.409 and is kept on file for review by the FAA Office of Civil Rights:

(1) Each sponsor who employs 50 or more employees in its aviation workforce.

(2) Each planning Agency which employs 50 or more employees in its agency for aviation purposes.

another Federal agency.

(2) An affirmative action plan for a State or local agency that the covered organization certifies meets the standards in § 152.409.

(3) A conciliation agreement, consent decree, or court order which provides short and long-range goals for equal employment opportunity similar to those which would be established in an affirmative action plan meeting the standards in § 152.409.

(c) Each sponsor shall require each aviation related activity (other than construction contractors) which employs 50 or more employees on the airport to prepare, and keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in § 152.409, unless the activity is subject to one of the mechanisms described in paragraphs (b) (1) through (3) of this section.

(d) Each sponsor shall require each aviation related activity described in paragraph (c) of this section to similarly require each of its covered suborganizations (other than construction contractors) which employs 50 or more employees on the airport to prepare, and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in § 152.409, unless the suborganization is subject to one of the mechanisms described in paragraphs (b) (1) through (3) of this section.

### § 152.409 Affirmative action plan standards.

(a) Each affirmative action plan required by this subpart shall be developed in accordance with the following:

(1) An analysis of the employer's aviation workforce which groups employees into the following job categories:

(i) Officials and managers.

(ii) Professionals.

(iii) Technicians.

(iv) Sales workers.

(v) Office and clerical workers.

(vi) Craft workers (skilled).

located in the SMSA, or, in the absence of an SMSA, in the counties contiguous to the employer's location or the location where the work is to be performed and in the areas from which persons may reasonably be expected to commute. This data on the total workforce of the applicable area will be supplied to grantees by the FAA. Grantees shall make this data available to the other organizations covered by this subpart. The comparison for minorities must be made only when minorities constitute at least 2 percent of the total workforce in the geographical area used for the comparison.

(3) A comparison, for the aviation workforce, of the total number of applicants and persons hired with the total number of minority and female applicants, and minorities and females hired, for the past year. Where this data is unavailable, the employer shall establish and maintain a system to provide the data, and shall make the comparison 120 days after establishing the data system.

(4) Where the percentage of minorities and women in the employer's aviation workforce, in each job category, is less than the minority and female percentage in any job category in the workforce of the geographical area used, an analysis, based on the comparison required by paragraph (a)(3) of this section, determining whether any of the following exists:

(i) Insufficient flow of minority and female applicants.

(ii) Disparate rejection of minority and female applicants. The FAA generally considers disparate rejection to exist whenever a selection rate for any race, sex, or ethnic group is less than 80 percent of the rate for the race, sex, or ethnic group with the highest selection rate.

(b) Each affirmative action plan required by this part shall be implemented through an action-oriented program with goals and timetables designed to eliminate obstacles to equal opportunity for women and minorities in recruitment and hiring, which shall include, but not be limited to:

(3) Where an insufficient flow of minority and female applicants (less than the percentage available) is indicated by the analysis required by paragraph (a)(4) of this section, good faith efforts to increase the flow of minority and female applicants through the following steps, as appropriate:

(i) Development or reaffirmation of an equal opportunity policy and dissemination of that policy internally and externally.

(ii) Contact with minority and women's organizations, schools with predominant minority or female enrollments, and other recruitment sources for minorities and women.

(iii) Encouragement of State and local employment agencies, unions, and other recruiting sources to ensure that minorities and women have ample information on, and opportunity to apply for, vacancies and to participate in examinations.

(iv) Participation in special employment programs such as Co-operative Education Programs with predominantly minority and women's colleges, "After School" or Work Study programs, and Summer Employment.

(v) Participation in "Job Fairs."

(vi) Participation of minority and female employees in Career Days, Youth Motivation Programs, and counseling and related activities in the community.

(vii) Encouragement of minority and female employees to refer applicants.

(viii) Motivation, training, and employment programs for minority and female hard-core unemployed.

### § 152.411 Affirmative action steps.

(a) Each grantee which is not described in § 152.407(a) and is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity, shall make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies

(b) Except as provided in paragraph (c) of this section, each sponsor shall require each of its aviation related activities on its airport, that is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism which provides short and long-range goals for equal employment opportunity, to take affirmative action steps and cause them to similarly require affirmative action steps of their covered suborganizations, as follows:

(1) Each aviation related activity or covered suborganization with less than 50 but more than 14 employees, must take the affirmative action steps enumerated in § 152.409(b)(3), as appropriate.

(2) Each aviation related activity or covered suborganization with less than 15 employees, must take the affirmative action steps enumerated in § 152.409(b)(3) (i) and (ii), as appropriate.

(c) Each sponsor shall require each construction contractor, that has a contract of $10,000 or more on its airport and that is not subject to an affirmative action plan, regulatory goals or timetables, or other mechanism which provides short and long-range goals for equal employment opportunity, to take the following affirmative action steps:

(1) The contractor must establish and maintain a current list of minority and female recruitment sources; provide written notification to these recruitment sources and to community organizations when employment opportunities are available; and maintain a record of each organization's response.

(2) The contractor must maintain a current file of the names, addresses, and telephone numbers of each minority and female walk-in applicant and each referral from a union, a recruitment source, or community organization and the action taken with respect to each individual. Where an individual is sent to the union hiring hall for referral, but not referred back to the contractor, or, if referred, not employed by the contractor, this shall be documented. The documentation shall include an explanation of, and information on, any additional actions that the contractor may have taken.

all management personnel and with all employees at least once a year.

(4) The contractor must disseminate the contractors's equal employment opportunity policy externally—

(i) By stating it in each employment advertisement in the news media, including news media with high minority and female readership; and

(ii) By providing written notification to, or participating in discussions with, other contractors and subcontractors with whom the contractor does business.

(5) The contractor must direct its recruitment efforts to minority and female organizations, to schools with minority and female students, and to organizations which recruit and train minorities and women, in the contractor's recruitment area.

(6) The contractor must encourage present minority and female employees to recruit other minorities and women.

(7) The contractor must, where possible, provide after school, summer, and vacation employment to minority and female youth.

(d) Each sponsor shall require each of its prime construction contractors on its airport, with a contract of $10,000 or more, to require each of the contractor's subcontractors on the airport to comply with the affirmative action steps in paragraph (c) of this section, with which it does not already comply, unless the subcontractor is subject to an affirmative action plan, regulatory goals or timetables, or other mechanism which provides short and long-range goals for equal employment opportunity, or the subcontract is less than $10,000.

### § 152.413 Notice requirement.

Each grantee shall give adequate notice to employees and applicants for employment, through posters provided by the Secretary, that the FAA is committed to the requirements of section 30 of the AADA, to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds authorized under this part.

(b) Each sponsor shall require its covered organizations to keep on file, for the period set forth in paragraph (a) of this section, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and shall cause them to require their covered suborganizations to keep similar records as applicable.

(c) Each grantee, employing 15 or more person, shall annually submit to the FAA a compliance report on a form provided by the FAA and a statistical report on a Form EEO–1 of the Equal Employment Opportunity Commission (EEOC) or any superseding EEOC form. If a grantee already is submitting a Form EEO–1 to another agency, the grantee may submit a copy of that form to the FAA as its statistical report. The information provided shall include goals and timetables, if established in compliance with the requirements of § 152.409 or with the requirements of another Federal agency or a State or local agency.

(d) Each sponsor shall—

(1) Require each of its aviation-related activities (except construction contractors), employing 15 or more persons, to annually submit to the sponsor the reports required by paragraph (c) of this section, on the same basis as stated in paragraph (c) of this section, and shall cause each aviation-related activitiy to require its covered suborganizations, with 15 or more employees, to annually submit the reports required by paragraph (c) of this section through the prime organization to the sponsor, for transmittal by the sponsor to the FAA.

(2) Annually collect from its aviation related activities employing less than 15 employees, and transmit to the FAA an aggregate employment report, that includes the employment of sponsors with less than 15 employees, on an EEO–1 or any superseding EEOC form.

(e) Each sponsor shall require each of its construction contractors on its airport, with a contract of $10,000 or more, which is not subject to

the contractor's subcontractors, with a subcontract of $10,000 or more, which are not subject to E.O. 11246 and the regulations of the DOL, to submit the reports required by paragraph (e) of this section to the prime contractor for submission to the sponsor. The sponsor shall transmit these reports to the FAA.

(g) Each organization required to prepare an affirmative action plan for the FAA under this subpart shall update it annually and as changed circumstances require. Each organization that has prepared a plan in compliance with the requirements of another Federal agency or a State or local agency, shall update it in accordance with the requirements of that agency.

### § 152.417 Monitoring employment.

(a) Each grantee shall allow the FAA Office of Civil Rights to monitor its equal employment opportunity compliance with this subpart through on-site reviews and desk audits. Reviews or audits will include the records submitted under § 152.415.

(b) As it deems necessary, the FAA Office of Civil Rights will conduct on-site or desk audits of covered aviation related activities on airports.

### § 152.419 Minority business.

Each person subject to this subpart is required to comply with the Minority Business Enterprise Regulations of the Department.

### § 152.421 Public accommodations, services, and benefits.

Requirements relating to the provision of public accommodations, services, and other benefits to beneficiaries under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and part 21 of the regulations of the Office of the Secretary of Transportation (49 CFR part 21) implementing Title VI are made applicable, where appropriate, to nondiscrimination and affirmative action on the basis of sex or creed, and shall be complied with by each applicant for assistance and each grantee.

the Director.

(b) *Investigations and informal resolutions.* The Departmental Office of Civil Rights will make a prompt investigation whenever a complaint, compliance review, report, or any other information indicates a possible failure to comply with this subpart. The procedures in 49 CFR part 21, augmented as appropriate by the investigative procedures of part 13 of this chapter, will be followed, except that—

(1) Compliance with a regulation of the Department applicable to minority business enterprise will be investigated and enforced through the procedures contained in that regulation; and

(2) Except as provided in paragraph (c) of this section, allegations of noncompliance with regulations governing equal employment opportunity of another Federal agency or a State or local agency, will be referred, for investigation and enforcement, to the Federal agency or, in the discretion of the Departmental Office of Civil Rights, to the State or local agency.

(c) When the FAA (under section 30 of the AADA) and another Federal agency, a referral agency recognized by the Equal Employment Opportunity Commission, or a court have concurrent jurisdiction over a matter—

(1) If the other agency or court makes a finding on the record that noncompliance or discrimination has occurred, the FAA will accept the finding, and determine what sanctions or remedies are appropriate under section 30 as a result of the finding, after permitting the party against whom the finding was made to be heard on the determination of the sanctions or remedies; or

(2) If it appears that delay, through referral to another agency, will result in the continued expenditure of Federal funds under this part without compliance with this subpart, the Secretary may—

(i) Investigate the matter;

(ii) Make a determination as to compliance with section 30; and

(iii) Impose appropriate sanctions and remedies.

This subpart contains procedures for suspending or terminating grants for airport development projects and airport planning.

### § 152.503 Suspension of grant.

(a) If the sponsor or planning agency fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor or planning agency, suspend the grant and withhold further payments pending—

(1) Corrective action by the sponsor or planning agency; or

(2) A decision to terminate the grant.

(b) Except as provided in paragraph (c), after receipt of notice of suspension, the sponsor or planning agency may not incur additional obligations of grant funds during the suspension.

(c) All necessary and proper costs that the sponsor or planning agency could not reasonably avoid during the period of suspension will be allowed, if those costs are in accordance with appendix C of this part.

### § 152.505 Termination for cause.

(a) If the sponsor or planning agency fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor or planning agency, terminate the grant in whole, or in part.

(b) The notice of termination will contain—

(1) The reasons for the termination, and

the sponsor or planning agency may not incur additional obligations of grant funds.

(d) Payments to be made to the sponsor or planning agency, or recoveries of payments by the FAA, under the grant shall be in accordance with the legal rights and liabilities of the parties.

### § 152.507 Termination for convenience.

(a) When the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds, the grant may be terminated in whole, or in part, upon mutual agreement of the FAA and the sponsor or planning agency.

(b) If an agreement to terminate is made, the sponsor or planning agency—

(1) May not incur new obligations for the terminated portion after the effective date; and

(2) Shall cancel as many obligations, relating to the terminated portion, as possible.

(c) The sponsor or planning agency is allowed full credit for the Federal share of the noncancellable obligations that were properly incurred by the sponsor before the termination.

### § 152.509 Request for reconsideration.

If a grant is suspended or terminated under this subpart, the sponsor or planning agency may request the Administrator to reconsider the suspension or termination.

### § 152.601 Purpose.

This subpart implements section 403 of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Pub. L. 95–620) in order to encourage conservation of petroleum and natural gas by recipients of Federal financial assistance.

### § 152.603 Applicability.

This subpart applies to each recipient of Federal financial assistance from the Federal Aviation Administration through the Airport Development Aid Program (ADAP) unless otherwise excluded by definition.

### § 152.605 Definitions.

As used in this subpart—

*Building construction* means construction of any building which receives Federal assistance under the program, which will exceed $200,000 in construction cost.

*Energy assessment* means an analysis of total energy requirements of a building, which, within the scope of the proposed construction activity, and at a level of detail appropriate to that scope, considers the following:

(a) Overall design of the facility or modification, and alternative designs;

(b) Materials and techniques used in construction or rehabilitation;

(d) Fuel requirements for heating, cooling, and operations essential to the function of the structure, projected over the life of the facility and including projected costs of this fuel; and

(e) Kind of energy to be used, including—

(1) Consideration of opportunities for using fuels other than petroleum and natural gas, and

(2) Consideration of using alternative, renewable energy sources.

*Major building modification* means modification of any building which receives Federal assistance under the program, which will exceed $200,000 in construction cost.

### § 152.607 Building design requirements.

Each sponsor shall perform an energy assessment for each federally-assisted building construction or major building modification project proposed at the airport. The building design, construction, and operation shall incorporate, to the extent consistent with good engineering practice, the most cost-effective energy conservation features identified in the energy assessment.

### § 152.609 Energy conservation practices.

Each sponsor shall require fuel and energy conservation practices in the operation and maintenance of the airport and shall encourage airport tenants to use these practices.

Airway Development Act of 1970.

This appendix does not apply to: (1) Any contract with the owner of airport hazards, buildings, pipelines, powerlines, or other structures or facilities, for installing, extending, changing, removing, or relocating that structure or facility, and (2) any written agreement or understanding between a sponsor and another public agency that is not a sponsor of the project, under which the public agency undertakes construction work for or as agent of the sponsor.

### I. Contract Provisions Required by the Regulations of the Secretary of Labor

Each sponsor entering into a construction contract for an airport development project shall insert in the contract and any supplemental agreement:

(1) The provisions required by the Secretary of Labor, as set forth in paragraphs A through K;

(2) The provisions set forth in paragraph L, and

(3) Any other provisions necessary to ensure completion of the work in accordance with the grant agreement.

The provisions in paragraphs A through K and provision (5) in paragraph L need not be included in prime contracts of $2,000 or less.

*A. Minimum wages.* (1) All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act [29 CFR part 3], the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the Secretary of Labor which is (are) attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision(s) shall be posted by the contractor at the site of of this paragraph, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (4) below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period (29 CFR 5.5(a)(1)(i)).

(2) Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the [insert sponsor's name] to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination (29 CFR 5.5(a)(1)(ii)).

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for determination (29 CFR 5.5(a)(1)(iii)).

(4) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage

*B. Withholding: FAA from sponsor.* Pursuant to the terms of the grant agreement between the United States and [insert sponsor's name], relating to Airport Development Aid Project No. ____, and part 152 of the Federal Aviation Regulations (14 CFR part 152), the FAA may withhold or cause to be withheld from the [insert sponsor's name] so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanics, including any apprentice or trainee, employed or working on the site of the work all or part of the wages required by this contract, the FAA may, after written notice to the [insert sponsor's name], take such action as may be necessary to cause the suspension of any further payment or advance of funds until such violations have ceased (29 CFR 5.5(a)(2)).

*C. Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv) (see paragraph (4) of paragraph A above), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) The contractor will submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the [insert sponsor's name] for transmission to the FAA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(3) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5(a)(3)(i) and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(4) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3) of this paragraph.

(5) The falsification of any of the certifications in this paragraph may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

*D. Apprentices and trainees.* (1) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his

resentative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination (29 CFR 5.5(a)(4)(i)).

(2) *Trainees.* Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the [insert sponsor's name] or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved (29 CFR 5.5(a)(4)(ii)).

5.2(c) shall be subject to the provisions of 29 CFR 5.5(a)(4) (see paragraph D(1), (2), and (3) above).

*E. Compliance with Copeland Regulations.* The contractor shall comply with the Copeland Regulations (29 CFR part 3) of the Secretary of Labor which are herein incorporated by reference (29 CFR 5.5(a)(5)).

*F. Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek unless such laborer or mechanic received compensation at a rate not less than 1½ times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, as the case may be (29 CFR 5.5(c)(1)).

*G. Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of paragraph F of this provision, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of said paragraph F of this provision, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by said paragraph F of this provision (29 CFR 5.5(c)(2)).

*H. Withholding for unpaid wages and liquidated damages.* The FAA may withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph G of this provision (29 CFR 5.5(c)(3)).

of his subcontracts the clauses contained in paragraphs A through K of this provision, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made (29 CFR 5.5(a)(6), 5.5(c)(4)).

*K. Contract termination debarment.* A breach of clause A, B, C, D, E, or J may be grounds for termination of the contract, and for debarment as provided in § 5.6 of the Regulations of the Secretary of Labor as codified in 29 CFR 5.6 (29 CFR 5.5(a)(7)).

*L. Additional contract provisions.* (1) *Airport Development Aid Program Project.* The work in this contract is included in Airport Development Aid Program Project No. ——— which is being undertaken and accomplished by the [insert sponsor's name] in accordance with the terms and conditions of a grant agreement between the [insert sponsor's name] and the United States, under the Airport and Airway Development Act of 1970 (84 Stat. 219) and part 152 of the Federal Aviation Regulations (14 CFR part 152), pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

(2) *Consent to assignment.* The contractor shall obtain the prior written consent of the [insert sponsor's name] to any proposed assignment of any interest in or part of this contract.

(3) *Convict labor.* No convict labor may be employed under this contract.

(4) *Veterans preference.* In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to qualified individuals who have served in the military service of the United States (as defined

by the FAA, the [insert sponsor's name] may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by this contract.

(6) *Nonpayment of wages.* If the contractor or subcontractor fails to pay any laborer or mechanic employed or working on the site of the work any of the wages required by this contract the [insert sponsor's name] may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment or advance of funds until the violations cease.

(7) *FAA inspection and review.* The contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.

(8) *Subcontracts.* The contractor shall insert in each of his subcontracts the provisions contained in paragraphs [insert designation of 6 paragraphs of contract corresponding to paragraphs (1), (3), (4), (5), (6), and (7) of this paragraph], and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(9) *Contract termination.* A breach of paragraphs [insert designation of 3 paragraphs corresponding to paragraphs (6), (7), and (8) of this paragraph] may be grounds for termination of the contract.

## II. Adjustment in Liquidated Damages

A contractor or subcontractor who has become liable for liquidated damages under the provision set out in paragraph I.G of this appendix and who claims that the amount administratively determined as liquidated damages under section 104(a) of the Contract Work Hours and Safety Standards Act is incorrect or that he violated inadvertently the Con-

apply to the Administrator for an appropriate adjustment in liquidated damages or for release from liability for the liquidated damages.

### III. Corrected Wage Determinations

The Secretary of Labor corrects any wage determination included in any contract under this appendix whenever the wage determination contains clerical errors. A correction may be made at the Administrator's request or on the initiative of the Secretary of Labor.

### IV. Applicability of Interpretations of the Secretary of Labor

When applicable by their terms, the regulations of the Secretary of Labor (29 CFR 5.20–5.32) interpreting the ''fringe benefit provisions'' of the Davis-Bacon Act apply to the contract provisions in this appendix.

### V. Records

A sponsor who is required to include in a construction contract the labor provisions required by this appendix shall require the contractor to comply with those provisions and shall cooperate with the FAA in effecting that compliance. For this purpose the sponsor shall—

make the necessary determinations), as soon as possible after receiving it, to the extent necessary to determine whether the contractor is complying with the labor provisions required by this appendix and particularly with respect to whether the contractor's employees are correctly classified;

(3) Have investigations made during the performance of work under the contract, to the extent necessary to determine whether the contractor is complying with those labor provisions, including in the investigations, interviews with employees and examinations of payroll information at the work site by the sponsor's resident engineer (or any other of its employees or agents who is qualified to make the necessary determinations);

(4) Keep the appropriate FAA office fully advised of all examinations and investigations made under this appendix, all determinations made on the basis of those examinations and investigations, and all efforts made to obtain compliance with the labor provisions of the contract; and

(5) Give priority to complaints of alleged violations, and treat as confidential any written or oral statements made by any employee in connection with a complaint, and not disclose an employee's statement made in connection with a complaint to a contractor without the employee's consent.

**Number and Subject**

150/5100-12—Electronic Navigational Aids Approved for Funding Under the Airport Development Aid Program (ADAP).
150/5190-3A—Model Airport Hazard Zoning Ordinance.
150/5210-7A—Aircraft Fire and Rescue Communications.
150/5210-10—Airport Fire and Rescue Equipment Building Guide.
150/5300-2C—Airport Design Standards—Site Requirements for Terminal Navigational Facilities.
150/5300-4B—Utility Airports—Air Access to National Transportation.
150/5300-6—Airport Design Standards—General Aviation Airports—Basic and General Transport.
150/5300-8—Planning and Design Criteria for Metropolitan STOL Ports.
150/5320-6B—Airport Pavement Design and Evaluation.
150/5320-10—Environmental Enhancement at Airports—Industrial Waste Treatment.
150/5320-12—Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.
150/5325-2C—Airport Design Standards—Airports Served by Air Carriers—Surface Gradient and Line-of-Sight.
150/5325-4—Runway Length Requirements for Airport Design.
150/5325-6A—Airport Design Standards—Effect and Treatment of Jet Blast.
150/5325-8—Compass Calibration Pad.
150/5335-1A—Airport Design Standards—Airports Served by Air Carriers—Taxiways.
150/5335-2—Airport Aprons.
150/5335-3—Airport Design Standards—Airports Served by Air Carriers—Bridges and Tunnels on Airports.
150/5335-4—Airport Design Standards—Airports Served by Air Carriers—Runway Geometrics.
150/5340-1D—Marking of Paved Areas on Airports.
150/5340-4C—Installation Details for Runway Centerline and Touchdown Zone Lighting Systems.
150/5340-5A—Segmented Circle Airport Marker System.
150/5340-8—Airport 51-foot Tubular Beacon Tower.
150/5340-14B—Economy Approach Lighting Aids.
150/5340-17A—Standby Power for Non-FAA Airport Lighting System.
150/5340-18—Taxiway Guidance Sign System.
150/5340-19—Taxiway Centerline Lighting System.
150/5340-20—Installation Details and Maintenance Standards for Reflective Markers for Airport Runway and Taxiway Centerlines.
150/5340-21—Airport Miscellaneous Lighting Visual Aids.
Lights.
150/5340-23A—Supplemental Wind Cones.
150/5340-24—Runway and Taxiway Edge Lighting System.
150/5340-25—Visual Approach Slope Indicator (VASI) Systems.
150/5345-1E—Approved Airport Lighting Equipment.
150/5345-2—Specification for L-810 Obstruction Light.
150/5345-3C—Specification for L-821 Panels for Remote Control of Airport Lighting.
150/5345-4—Specification for L-829 Internally Lighted Airport Taxi Guidance Sign.
150/5345-5—Specification for L-847 Circuit Selector Switch, 5,000 Volt 20 Ampere.
150/5345-7C—Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.
150/5345-10C—Specification for L-828 Constant Current Regulators.
150/5345-11—Specification for L-812 Static Indoor Type Constant Current Regulator Assembly; 4 KW and 7½ KW, With Brightness Control for Remote Operation.
150/5345-12A—Specification for L-801 Beacon.
150/5345-13—Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-18—Specification for L-811 Static Indoor Type Constant Current Regulator Assembly, 4 KW; With Brightness Control and Runway Selection for Direct Operation.
150/5345-21—Specification for L-813 Static Indoor Type Constant Current Regulator Assembly; 4 KW and 7½ KW; for Remote Operation of Taxiway Lights.
150/5345-26A—Specification for L-823 Plug and Receptacle. Cable Connectors.
150/5345-27A—Specification for L-807 Eight-foot and Twelve-foot Unlighted or Externally Lighted Wind Cone Assemblies.
150/5345-28C—Specification for L-851 Visual Approach Slope Indicators and Accessories.
150/5345-36—Specification for L-808 Lighted Wind Tee.
150/5345-39A—FAA Specification for L-853, Runway and Taxiway Retroreflective Markers.
150/5345-42A—FAA Specification L-857, Airport Light Bases, Transformer Housings, and Junction Boxes.
150/5345-43B—FAA/DOD Specification L-856, High Intensity Obstruction Lighting Systems.
150/5345-44A—Specification for L-858 Retroreflective Taxiway Guidance Sign.
150/5345-45—Lightweight Approach Light Structure.
150/5345-46—Specification for Semiflush Airport Lights.
150/5345-47—Isolation Transformers for Airport Lighting Systems.
150/5345-48—Specification for Runway and Taxiway Edge Lights.

and requirements applicable to grants for airport development under the Airport and Airway Development Act of 1970.

1. *General.* Each contract under a project must meet the requirements of local law and the requirements and standards contained in this appendix. The sponsor shall establish procedures for procurement of supplies, equipment, construction, and services funded under the project which meet the requirements of Attachment O of Office of Management and Budget (OMB) Circular A–102 (44 FR 47874) and of this appendix. Subject to funding and time limitations, the FAA reviews the sponsor's procurement system to determine whether it may be certified in accordance with Attachment O of OMB Circular A–102.

2. *Out-of-state labor.* No procedure or requirement shall be imposed by any grantee which will operate to discriminate against the employment of labor from any other State, possession, or territory of the United States in the construction of a project.

3. *Bid guarantee.* All bids for construction or facility improvement in excess of $100,000 shall be accompanied by a bid guarantee consisting of a firm commitment such as a bid bond, certified check or other negotiable instrument equivalent to five percent of the bid price as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

4. *Construction work.* All construction work under a project must be performed under contract, except in a case where the Administrator determines that the project, or a part of it, can be more effectively and economically accomplished on a force account basis by the sponsor or by another public agency acting for or as agent of the sponsor.

5. *Change order.* Unless otherwise authorized by the Administrator, no sponsor may issue any change order under any of its construction contracts or enter into a supplemental agreement unless three copies of that order or agreement have been sent to, and approved by, the FAA.

tractor or subcontractor to begin work under a project until—

a. The sponsor has furnished three conformed copies of the contract to the appropriate FAA office;

b. The sponsor has, if applicable, submitted a statement that comparable replacement housing, as defined in § 25.15 of the Regulations of the Office of the Secretary of Transportation, will be available within a reasonable period of time before displacement.

c. The appropriate FAA office has agreed to the issuance of a notice to proceed with the work to the contractor.

7. *Supervision and inspection.* No work will be commenced until the sponsor has provided for adequate supervision and inspection of construction and advised the appropriate FAA office.

8. *Engineering and planning services.* Unless otherwise authorized by the Administrator, each proposal for engineering and planning services shall be reviewed by FAA before the commencement of the development of design plans and specifications.

9. *Advertising general.* Unless the Administrator approves another method for use on a particular airport development project, each contract and supplemental agreement for construction work on a project in the amount of more than $10,000 must be awarded on the basis of public advertising and open competitive bidding under the local law applicable to the letting of public contracts.

10. *Advertising: conditions and contents.* There may be no advertisement for bids on, or negotiation of, a construction contract or supplemental agreement until the Administrator has either approved the plans and specifications or accepted a certification in accordance with § 152.7 that they meet all applicable standards prescribed by this part. The advertisement shall inform the bidders of the equal employment opportunity requirements of part 152. Unless the estimated contract price or construction cost in $2,000 or less, there may be no advertisement for bids or negotiations until the Administrator

*tions.* (a) *Specific request for wage determination.* At least 60 days before the intended date of advertising or negotiating of this section, the sponsor shall send to the appropriate FAA office, completed Department of Labor Form DB–11 or DB–11(a), as appropriate, with only the classifications needed in the performance of the work checked. General entries (such as ''entire schedule'' or ''all applicable classifications'') may not be used. Additional necessary classifications not on the form may be typed in the blank spaces or on an attached separate list. A classification that can be fitted into classifications on the form, or a classification that is not generally recognized in the area or in the industry, may not be used. Except in areas where the wage patterns are clearly established, the Form must be accompanied by any available pertinent wage payment or locally prevailing fringe benefit information.

(b) *General wage determination.* Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for that type of construction, the Secretary of Labor, upon the request of a Federal agency or in his discretion, may issue a general wage determination when, after consideration of the facts and circumstances involved, he finds that the applicable statutory standards and those of part 1, 29 CFR, Subtitle A, will be met. This general wage determination is used for all projects located in the area and for the type of construction covered by the general wage determination.

12. *Advertising: wage determinations.* (a) Wage determinations are effective only for 120 days from the date of the determinations. If it appears that a determination may expire between bid opening and award, the sponsor shall so advise the FAA as soon as possible. If it wishes a new request for wage determination to be made and if any pertinent circumstances have changed, it shall submit the appropriate form of the Department of Labor and accompanying information. If it claims that the determination expires before award and after bid the opening or bids is not effective, unless the Administrator finds that there is reasonable time to notify bidders. A modification may not continue in effect beyond the effective period of the wage determination to which it relates. The Administrator sends any modification to the sponsor as soon as possible. If the modification is effective, it must be incorporated in the invitation for bids, by issuing an addendum to the specifications or otherwise.

13. *Awarding contracts.* (a) A sponsor may not award a construction contract without the written concurrence of the Administrator (through the appropriate FAA office) that the contract prices are reasonable. A sponsor that awards contracts on the basis of public advertising and open competitive bidding, shall, after the bids are opened, send a tabulation of the bids and its recommendations for award to the appropriate FAA office. The sponsor may not accept a bid by a contractor whose name appears on the current list of ineligible contractors published by the Comptroller General of the United States under § 5.6(b) of the regulations of the Secretary of Labor (29 CFR part 5), or a bid by any firm, corporation, partnership, or association in which an ineligible contractor has a substantial interest.

(b) A sponsor's proposed contract must have pre-award review and approval by the FAA in any of the following circumstances:

(1) The sponsor's procurement system is not in compliance with one or more significant aspects of Attachment O of OMB Circular A–102 or with the standards of this appendix.

(2) The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

(3) The procurement is expected to exceed $10,000 and specifies a ''brand name'' product.

(c) The FAA may require pre-award review and approval of a sponsor's proposed contract under any of the following circumstances:

(1) The sponsor's procurement system has not yet been reviewed by the FAA for compliance with OMB Circular A–102 and this appendix.

the recipient's established procurement system or office.

(6) The proposal is for construction and is to be awarded through the negotiation procurement method or without competition.

14. *Force account work.* Before undertaking any force account construction work, the sponsor (or any public agency acting as agent for the sponsor) must obtain the written consent of the Administrator through the appropriate FAA office. In requesting that consent, the sponsor must submit—

(a) Adequate plans and specifications showing the nature and extent of the construction work to be performed under that force account;

(b) A schedule of the proposed construction and of the construction equipment that will be available for the project;

(c) Assurance that adequate labor, material, equipment, engineering personnel, as well as supervisory and inspection personnel as required by this appendix, will be provided; and

(d) A detailed estimate of the cost of the work, broken down for each class of costs involved, such as labor, materials, rental of equipment, and other pertinent items of cost.

Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) required by 41 CFR 60–4.2 in all solicitations for offers and bids on each nonexempt construction contract and subcontract;

(d) Include the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) required by 41 CFR 60–4.3(a) in each nonexempt construction contract and subcontract.

16. *Exceptions.* (a) Paragraphs 1 through 5 and paragraphs 9 through 13 of this section do not apply to contracts with the owners of airport hazards, buildings, pipelines, powerlines, or other structures or facilities, for installing, extending, changing, removing, or relocating any of those structures or facilities. However, the sponsor must obtain the approval of the appropriate FAA office before entering into such a contract.

(b) Any oral or written agreement or understanding between a sponsor and another public agency that is not a sponsor of the project, under which that public agency undertakes construction work for or as agent of the sponsor, is not considered to be a construction contract for the purposes of this appendix.

sponsor or planning agency must submit with its application in accordance with §§ 152.111 or 152.113, as applicable.

### I. General Assurance

Each applicant for an airport development grant or an airport planning grant shall submit the following assurance:

The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements, including Office of Management and Budget Circulars No. A–95 (41 FR 2052), A–102 (42 FR 45828), and FMC 74–4 (39 FR 27133; as amended by 43 FR 50977), as they relate to the application, acceptance, and use of Federal funds for this federally-assisted project.

### II. Airport Development

A. *Assurances.* Each applicant for an airport development grant shall submit the following assurances:

1. *Authority of applicant.* It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. *E.O. 11296 and E.O. 11288.* It will comply with the provisions of: Executive Order 11296, relating to evaluation of flood hazards, and Executive Order 11288, relating to the prevention, control, and abatement of water pollution.

3. *Sufficiency of funds.* It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed the facility for the purposes constructed.

4. *Construction.* It will obtain approval by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specification; that it will submit to the appropriate Federal agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

5. *Supervision, inspection, and reporting.* It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may require.

6. *Operation of facility.* It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.

7. *Access to records.* It will give the grantor agency and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.

8. *Access for handicapped.* It will require the facility to be designed to comply with part 27, Nondiscrimination on the Basis of Handicap in Federallly Assisted Programs and Activities Receiving or Benefiting from Federal Financial Assistance, of the Regulations of the Office of the Secretary of Transportation (49 CFR part 27). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

9. *Commencement and completion.* It will cause work on the project to be commenced within a

of the Civil Rights Act of 1964 (Pub. L. 88–352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

12. *Private gain.* It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

13. *Relocation assistance.* It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

14. *OMB Circular A–102.* It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A–102.

15. *Hatch Act.* It will comply with the provisions of the Hatch Act which limit the political activity of employees.

16. *Federal Fair Labor Standards Act.* It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and eduational

to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project. However, these limitations on the duration of the covenants do not apply to the covenant against exclusive rights and real property acquired with Federal funds. Any breach of these covenants on the part of the sponsor may result in the suspension or termination of, or refusal to grant Federal assistance under, FAA administered programs, or such other action which may be necessary to enforce the rights of the United States under this agreement.

18. *Conditions and limitations on airport use.* The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use on fair and reasonable terms without discrimination between such types, kinds, and classes. *Provided,* that the sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the Airport; and *Provided further,* That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public.

19. *Exclusive right.* The Sponsor—

a. Will not grant or permit any exclusive right forbidden by section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the Airport, or at any other airport now owned or controlled by it;

b. Agrees that, in furtherance of the policy of the FAA under this covenant, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the Airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop

exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

d. Agrees that it will terminate any other exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Development Act.

20. *Public use and benefit.* The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of the covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the Airport, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

b. That in any agreement, contract, lease or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the Sponsor will insert and enforce provisions requiring the contractor—

(1) To furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; Provided, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

22. *Operation and maintenance of the airport.* The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes; *Provided,* That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; and *Provided further,* That nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor. In furtherance of this covenant the sponsor will have in effect at all times arrangements for—

a. Operating the airport's aeronautical facilities whenever required;

b. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

c. Promptly notifying airmen of any condition affecting aeronautical use of the Airport.

23. *Airport Hazards.* Insofar as it is within its power and reasonable, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an airport hazard.

In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility

airspace or by the adoption and enforcement of zoning regulations, take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft.

25. *Airport layout plan.* The Sponsor will keep up to date at all times an airport layout plan of the Airport showing (1) boundaries of the Airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the airport layout plan. The Sponsor will not make or permit any changes or alterations in the airport or in any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

26. *Federal use of facilities.* All facilities of the Airport developed with Federal aid and all those usable for the landing and taking off of aircraft, will be available to the United States at all times, without charge, for use by government aircraft in common with other aircraft, except that if the use by government aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by government aircraft will be considered to exist when operations of such aircraft are in excess of the gross accumulative weight of government aircraft using the Airport (the total movements of government aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

27. *Areas for FAA Use.* Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation, and maintenance of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the project. Such areas or any portion thereof will be made available as provided herein within 4 months after receipt of written requests from the FAA.

28. *Fee and rental structure.* The airport operator or owner will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the Airport as self-sustaining as possible under the circumstances existing at the Airport, taking into account such factors as the volume of traffic and economy of collection.

29. *Reports to FAA.* The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential data are furnished. The Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments, will be made available of inspection and audit by the Secretary and the Comptroller General of the United States, or their duly authorized representatives, upon reasonable request. The Sponsor will furnish to the FAA or to the General Accounting Office, upon request, a true copy of any such document.

ation of the Airport or the performance of the covenants of this part, the sponsor will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

32. *Performance obligation.* The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the FAA to be eligible under the Act and Regulations to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Airport by any agency or person other than the Sponsor or an employee of the Sponsor, the Sponsor will reserve sufficient rights and authority

layout plan shall submit with the plan an environmental assessment prepared in conformance with appendix 6 of FAA Order 1050.1C, "Policies and Procedures for Considering Environmental Impacts" (45 FR 2244; January 10, 1980) and FAA Order 5050.4 "Airport Environmental Handbook" (45 FR 56622; August 25, 1980), if an assessment is required by Order 5050.4.

### III. Airport Planning

Each applicant for an airport planning grant shall submit the assurances numbered 1 (except for the phrase "and to finance and construct the proposed facilities"), 7, 9, 11 (except for the last sentence), and 12, 14, 15, 30, and 33 of part II of this appendix.

(Amdt. 152–11, Eff. 8/25/80)


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